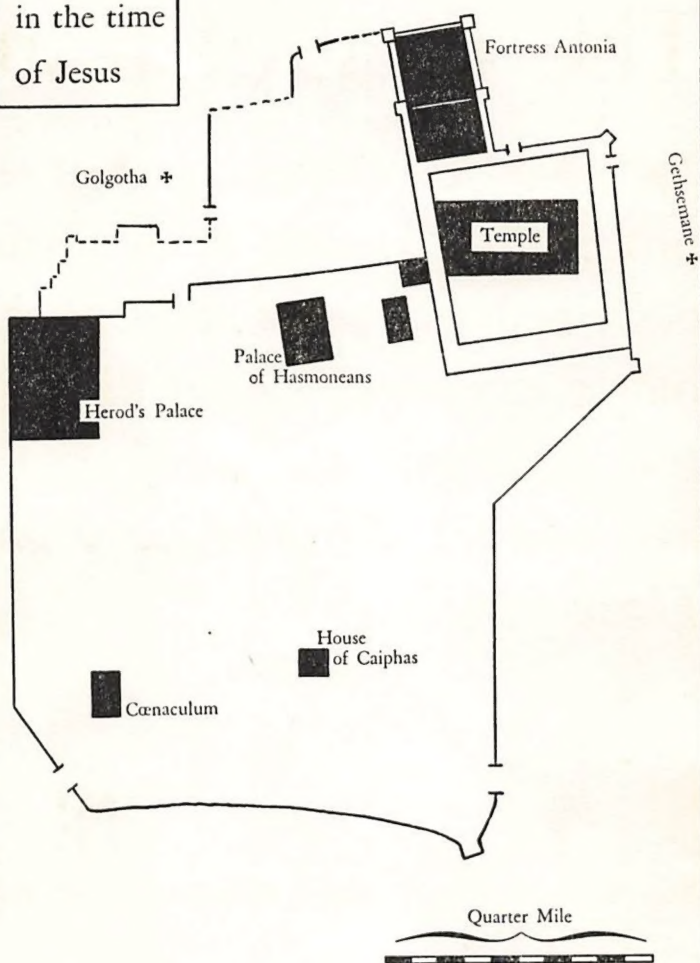


## The Trial of Jesus

Jerusalem  
in the time  
of Jesus



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The Jewish and Roman proceedings against Jesus Christ described and assessed from the oldest accounts by Josef Blinzler *translated from the second revised and enlarged edition by Isabel and Florence McHugh.*

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INTENSIVELY evaluating all available sources (including material unearthed at Qûmran), Dr. Josef Blinzler reconstructs the events that led to the tragedy of Golgotha. While completely up-to-date in its scholarship, *The Trial of Jesus* makes absorbing and continuous reading since purely technical questions are dealt with in footnotes and excursuses.

Doctor Blinzler's work has a special pertinence in that he is at pains to examine the much mooted question of the responsibility for the death of Christ. He concludes that both the Sanhedrin and Pilate sentenced Jesus to death; but the chief guilt he finds to be upon the small group of Jews who made up the Sanhedrin of those days and the areas of the population of Jerusalem that were under their influence.

Not unaware of the consequences that vapid anti-Semites might draw from his thought, Dr. Blinzler clearly establishes that any connection between modern anti-Semitism and the Christian passion narratives is simply unjustified. The evangelists were not anti-Semites and anti-Semitism is incompatible with their Christianity.

*The Trial of Jesus* is an important book: it is a masterpiece of scholarship and a document that gives the lie to contemporary hate-mongers.

*From the reviews—*

Ceslaus Spicq, O.P., writes: "This is a meticulous work of exegesis which measures the juridical character of the trial of Jesus. Everything is worked out with brilliance as well as objectivity. It is the best and most complete of the studies of the trial of Jesus."

The *Pastoralblatter* of Stuttgart, a Protestant publication, comments:

"This is a work which no one who, in the future, wishes to treat of the trial of Jesus scientifically can do without."

K. S. Bader, a Mainz jurist, says: "The author approaches the problem with keenness, and examines the progress of the trial down to the finest details. The book is deeply moving, just as the trial reports themselves are deeply moving."

Jules Isaac, the Jewish historian, writes: "I have approached the reading of this book with genuine sympathy. It is a strongly supported and documented work. The writing is clear and sound, and remarkably moderate; it manifests a laudable effort at comprehension with regard to Judaism."

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# The Trial of Jesus

" Der Prozess Jesu.

the Jewish and Roman  
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oldest accounts by Josef Blinzler, 1910  
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## AUTHOR'S PREFACE

THE AIM of the following work is to investigate and present the historical sequence and juridical character of the trial of Jesus insofar as the available biblical and nonbiblical sources render this possible. Every effort has been made to keep the purely technical data down to a minimum and to give a generally intelligible, coherent report of the proceedings. Nevertheless, the involved nature and the importance of the subject has made it necessary to examine an unusually large number of separate questions of a historical, exegetical, and exegetical-cum-historical nature. In order to make the book easier reading for the nonexpert, these questions have been dealt with as far as possible in separate excursions and in the footnotes.

As the gospel texts could only be quoted verbatim in exceptional cases, it is advisable to use a synopsis of the gospels when studying the various chapters.

This English edition is the translation of the second edition of *Der Prozess Jesu*, published by Pustet of Regensburg in 1955, but it has been supplemented throughout with comments on, and particulars of, the literature on the subject which has appeared since the publication of the German edition.

The author dedicates his book in grateful homage to the memory of His Eminence, the late Cardinal-Archbishop Theodor Inntzer of Vienna who, himself the author of a great and scholarly commentary on the history of the passion, repeatedly showed an unusual measure of interest and sympathy for this work, both by letter and personally, the last occasion being shortly before his death, when he visited Passau.

Passau, Bavaria,  
GERMANY,  
SCHROTTGASSE 12.

PROFESSOR DR. JOSEF BLINZLER

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## ABBREVIATIONS

- AELK *Allgemeine Evangelisch-Lutherische Kirchenzeitung* (Leipzig).  
 AER *American Ecclesiastical Review* (Washington).  
 AJT *American Journal of Theology* (New York).  
 Ang *Angelicum* (Rome).  
 ARW *Archiv für Religionswissenschaft* (Berlin and Leipzig).  
 AST *Analecta Sacra Tarraconensia* (Barcelona).  
 AThR *Anglican Theological Review* (New York).  
 BALAC *Bulletin d'ancienne littérature et d'archéologie chrétienne* (Paris).  
 Bibl *Biblica* (Rome).  
 BM *Benediktinische Monatsschrift* (Beuron).  
 BiZ *Biblische Zeitschrift* (Paderborn).  
 Bs *Bibliotheca Sacra* (Dallas).  
 BZ *Byzantinische Zeitschrift* (Leipzig).  
 CBQ *Catholic Biblical Quarterly* (Washington).  
 CollF *Collectanea Franciscana* (Rome).  
 CQR *Church Quarterly Review* (London).  
 DAL *Dictionnaire d'archéologie chrétienne et de liturgie* (Paris).  
 DictB *Dictionnaire de la Bible*. Vigouroux.  
 DT *Divus Thomas* (Fribourg).  
 DTh *Deutsche Theologie* (Stuttgart).  
 EE *Estudios Eclesiásticos* (Madrid).  
 Et *Études* (Paris).  
 ETL *Ephemerides Theologicæ Lovaniensis* (Louvain).  
 EvanT *Evangelische Theologie* (Munich).  
 ExpT *Expository Times* (Edinburgh).  
 FIP *Florilegium Patristicum* (Bonn).  
 GTT *Gereformeerd Theologisch Tijdschrift* (Aalten).

- HJ *Hibbert Journal* (London).  
 HThR *Harvard Theological Review* (Cambridge, Mass.).  
 IER *Irish Theological Record* (Dublin).  
 ITQ *Irish Theological Quarterly* (Maynooth).  
 JBL *Journal of Biblical Literature* (New Haven).  
 JBR *Journal of Bible and Religion* (Boston).  
 JQR *Jewish Quarterly Review* (Philadelphia).  
 JR *Journal of Religion* (Chicago).  
 JThSt *Journal of Theological Studies* (London).  
 Kath *Der Katholik* (Mainz).  
 LThK *Lexikon für Theologie und Kirche* (Freiburg in Breisgau).  
 Mnem *Mnemosyne* (Leyden).  
 MThZ *Münchener Theologische Zeitschrift* (Munich).  
 NRT *Nouvelle Revue Théologique* (Louvain).  
 NTS *New Testament Studies* (St. Andrews).  
 OCP *Orientalia Christiana Periodica* (Rome).  
 PG *Patrologia græca*. Migne.  
 PL *Patrologia latina*. Migne.  
 PRE *Realencyklopädie für protestantische Theologie und Kirche*. Herzog-Hauck.  
 PWR *Realencyklopädie der klassischen Altertumswissenschaft* (Stuttgart). Pauly-Wissowa.  
 RAC *Rivista di archeologia cristiana* (Rome).  
 RArch *Revue Archéologique* (Paris).  
 RB *Revue Bénédictine* (Maredsous).  
 RBibl *Revue Biblique* (Paris).  
 RBPh *Revue belge de philologie et d'histoire* (Brussels).  
 RGG *Religion in Geschichte und Gegenwart* (Tübingen). Gunkel-Zscharnack.  
 RH *Revue historique* (Paris).  
 RHDr *Revue d'Histoire du Droit* (Brussels).  
 RHPR *Revue d'histoire et philosophie religieuse* (Strasbourg).  
 RHR *Revue de l'histoire des religions* (Paris).  
 RQ *Römische Quartalschrift* (Freiburg in Breisgau).

- RSR *Recherches de science religieuse* (Paris).  
SAW *Sitzungsberichte*, Vienna Academy.  
SC *La Scuola Cattolica* (Milan).  
Scrip *Scripture* (Edinburgh).  
StTh *Studia Theologica* (Lund).  
StZ *Stimmen der Zeit* (Munich).  
ThBl *Theologische Blätter* (Leipzig).  
ThG *Theologie und Glaube* (Paderborn).  
ThLZ *Theologische Literaturzeitung* (Leipzig).  
ThRs *Theologische Rundschau* (Stuttgart).  
ThStKr *Theologische Studien und Kritiken* (Gotha).  
TPQ *Theologisch-praktische Quartalschrift* (Linz).  
TQ *Theologische Quartalschrift* (Tübingen).  
TS *Theological Studies* (Woodstock, Maryland).  
TWB *Theologisches Wörterbuch zum Neuen Testament*. Kittel.  
VD *Verbum Domini* (Rome).  
VC *Vigiliæ Christianæ* (Amsterdam).  
WkP *Wochenschrift für klassische Philologie* (Berlin).  
WTJ *Westminster Theological Journal* (Philadelphia).  
ZAW *Zeitschrift für die alttestamentliche Wissenschaft* (Giessen and Berlin).  
ZDMG *Zeitschrift der Deutschen Morgenländischen-Gesellschaft* (Leipzig).  
ZkTh *Zeitschrift für katholische Theologie* (Innsbruck).  
ZNW *Zeitschrift für die neutestamentliche Wissenschaft und die Kunde der älteren Kirche* (Giessen and Berlin).  
ZSysT *Zeitschrift für systematische Theologie* (Gütersloh).  
ZTK *Zeitschrift für Theologie und Kirche* (Tübingen).  
*See also the final section of the Bibliography, pp. 303 f.*

## The Trial of Jesus

## 1. THE PROBLEM

THERE IS hardly a part of the life of Jesus which is receiving closer and more widespread study today than His trial.

On May 14, 1948, almost nineteen-hundred years after the collapse of the ancient Jewish State, a new independent State of Israel came into being once more. Since then the expectation has been expressed at various times on the Christian side that the Israeli government, as successor to the traditions of the ancient Jewish Sanhedrin government, should recapitulate the trial of Jesus and reverse the monstrously wrong verdict which was pronounced at the time. According to reports appearing in the world press in the spring of 1949, a formal proposal to this effect, embodied in a document of fifteen pages, was presented to the Israeli Ministry of Justice by a Dutch jurist under the pseudonym of H. 187, and Chief Justice Moshe Smoira was said to have promised a careful examination of the matter.<sup>1</sup> But even earlier than that the idea of demanding a revision of the trial of Jesus was to be met with here and there. In fact, in the early 1930s the sen-

<sup>1</sup> U.P. report from Tel-Aviv which appeared in the *Baseler Arbeiter-Zeitung* (Feb. 10, 1949), the *Schwäbische Landeszeitung* (Jan. 31 and Mar. 18, 1949) and other newspapers. Cf. also E. IRINYI, "Der Prozess Jesu," *Wiener Wochenausgabe* (Mar. 24, 1951). This demand has also come several times from the Jewish side. See J. BONSIIVEN, *Les Juifs et Jésus* (1937) p. 189: "Reviser le procès de Jésus: des Juifs, de plus en plus nombreux, estiment qu'est pour Israël un devoir sacré." He cites one of these voices: "Chaim Zhitlowsky, écrivain yiddish d'Amérique, aux ardentés convictions socialistes, écrivait récemment un article intéressant sur la condamnation de Jésus et l'appelait un procès Dreyfus. Il apportait des arguments pour une révision 'de notre condamnation quotidienne et de la crucifixion de notre frère innocent de Nazareth.'" In "Erwählung als Gabe und Aufgabe: Eine Analyse des Jesus-Prozesses," *Judaica*, 11 (1955), 94 f., J. ELIAS reports that after the Second World War a "prominent representative of the Jewish priesthood" had put forward the proposal that the trial of Jesus should be examined. See also n. 3 below.

sational news came out that a Jewish court had actually already carried out a new trial. True, the details were most contradictory and unreliable. According to one account the proceedings had taken place in 1931. On July 25 of that year a court consisting of distinguished Jewish jurists was said to have assembled in Jerusalem under the presidency of one Dr. Veldeissel, and after hearing the four-hour-long address of the prosecuting counsel and the five-hour-long address of the counsel for the defense, and consulting at length together, had agreed by four votes to one upon a verdict that Jesus was innocent.<sup>2</sup> According to another version, this proceeding had only taken place on April 25, 1933.<sup>3</sup> Then again, in 1949, news went round of another kind of revision. This time the papers announced that the French jurist Jacquenot had examined the juridical defensibility of the trial of Jesus in the *Maison du droit* of the legal faculty of Paris, and together with his colleagues had come to the conclusion that owing to the technical error into which the Jewish Sanhedrin had fallen, the death sentence pronounced appeared to lack legal validity.<sup>4</sup>

A second circumstance which proves our theme to be particularly pertinent is the great wave of anti-Semitism of the very recent past. When that strange contemporary movement came to be analyzed, after 1945, it was repeatedly stated on the part of Jews that, when all was said and done, modern anti-Semitism was nothing else than the logical result of the Christian thesis that the Jews were guilty of the death of Jesus. In April, 1947, the Zionist

<sup>2</sup> E. SCHWARZENBAUER, "Revision des Prozesses Jesu?" in *Katholischer Digest*, 3 (1949), 407-409, quoting the Swiss newspaper *Der Bund* of April 2, 1949.

<sup>3</sup> In the Paris review *Jérusalem, Revue mensuelle illustrée*, 28 (1933) 464. BONSIRVEN, *op. cit.*, p. 190, n.1, gets this information from *The Amazing Jew* by A. J. POLLOCK (1936), p. 109, who states that the indictment ran to 1000 typed pages. BONSIRVEN (*loc. cit.*) casts some doubt on the authenticity of the story: "M Pollock ne donne pas les sources de son récit; il nous communique que dans une nouvelle édition de son livre il omettra toute référence à la révision du procès de Jésus." The idea of a revision by a Jewish court of the trial of Jesus (according to POLLOCK, *op. cit.*, p. 109; BONSIRVEN, *op. cit.*, p. 190) was especially advocated by one Solomon SHWAYDER, a Jewish jurist of Denver, Colorado, who initiated his campaign in 1929 but died in 1931 without having achieved his goal.

<sup>4</sup> F. A. VIALLET-PARIS, in a report, "Revision des Prozesses Jesu," *Schwäbische Landeszeitung* (Mar. 18, 1949).

organ, *La Terre Retrouvée*, published an article entitled "La meurtrière tradition du déicide." In this article it was declared that the said Christian thesis led in a straight line to the gas-chambers of Auschwitz. As long as Christianity continued to cultivate this ferment of hate in its so-called "religion of love," anti-Semitism would not be eliminated.<sup>5</sup> We cannot go into the unsoundness of this deduction now; we would only remark in passing that anti-Semitism existed long before Christianity came into being, and that a Christian outlook neither is nor has been a characteristic of the modern anti-Semites. But naturally Christian researchers have been led by these assertions to give increased attention to the problem of the part played by Jews in the death of Jesus. This was all the more necessary since, even among the ranks of interpreters of the Bible, the conviction has been expressed with increasing frequency that the traditional conception of the trial of Jesus was no longer tenable and that the Jewish authorities of the time did not conduct any legal action whatsoever against Jesus.

However, quite apart from this time-bound pertinence, the legal trial of Jesus of Nazareth is one of the most important, remarkable and sublime subjects in the history of mankind. There is no event of either ancient or modern times which has affected humanity more deeply and more enduringly, occupied the thoughts

<sup>5</sup> "Il est rigoureusement vrai que la meurtrière tradition chrétienne aura été la première pourvoyeuse d'Auschwitz. . . . C'est la notion . . . du Christ immolé par les Juifs qui a rendu possible toutes les haines et tous les massacres. Tant que les chrétiens n'auront pas cessé de cultiver ce ferment de haine dans leur religion dite d'amour, tant que leurs écoles et leurs prières n'auront pas banni ce mensonge originel, l'antisémitisme vivra et ne pourra être vaincu"—*La Terre Retrouvée* (Apr. 1, 1947). Similar bitter words have come from R. T. HERFORD, *JJS*, 1 (1948), 5-11, and J. ISAAC, *Jésus et Israël* (1948) pp. 508 f. Exaggerated though such assertions are, one can understand them when one thinks of such incidents as one which took place at a plenary session of the U.N.O. in May, 1947. In the presence of delegates of many nations and creeds the Arab delegate complained that certain utterances of the Jewish delegate were an insult to the Grand Mufti. "Are such utterances seemly," he asked, "on the part of the representative of a people who put the Founder of Christianity to death?" (*Jewish Chronicle*, May 16, 1947). It is significant, however, that this argument was voiced by the representative of a non-Christian religion. Cf. J. DANIELOU, *Êt*, 258 (1948), 68-74.

of succeeding generations more intensively, touched hearts more deeply, captivated humanity's religious and artistic imagination more completely, or given stronger impetus to human strivings than that drama of which the final scene took place one Friday more than nineteen-hundred years ago—it was actually the seventh of April of the year 30 A.D.—on a hill outside the walls of Jerusalem.

Certainly, the trial of Jesus has also, from time immemorial, been one of the most debated events in world history. Like all the public actions of Jesus, the finale of His life was and is a sign to be contradicted. For the believing Christian there is no need of formal proof that Jesus of Nazareth was condemned and executed as an innocent person. Non-Christians too, who see in Him at best one of the noblest and most fascinating figures in human history, have scarcely ever failed to recognize this fact when they sifted the evidence seriously and without prejudice. But if Jesus was pronounced guilty and executed without being really guilty then the question arises as to who was responsible for this; and it is just this question which has been hotly contested for centuries and which even today exercises and disturbs the minds of men.

It seems necessary to investigate the reasons for this lack of agreement. In the first place it is the result of different assessments of the sources. True, the number of the documents which can be regarded as sources has been fairly unequivocally determined, but in the evaluation of the main sources, namely, the four gospels, the researchers, among whom are to be found philologists, historians, and legalists as well as theologians, differ widely. Rationalistic Bible criticism declares more or less definitely that St. John's Gospel and also parts of the three older, so-called "synoptic Gospels" are clearly unworthy of credence. Generally speaking, however, such verdicts are based upon very subjective considerations, and actually even in the ranks of the critics themselves, opinion is anything but unanimous as to what can really be regarded as reliable tradition, and what cannot, and

so each one arrives at a different interpretation of the events as reported. Even conservative exegesis, which trusts the Bible texts on principle and examines them as witnesses and not as defendants, can arrive at an interpretation which varies in detail owing to a different exposition of individual texts, or a different evaluation of the literary content of the reports. A second factor of uncertainty is the fact that our knowledge of the legal administration of Judea in the time of Jesus is only fragmentary. Apart from the facts given in the gospels, we have no definite knowledge as to how the legal powers of the Roman authorities and those of the native Jewish authorities were demarcated the one from the other. We possess neither the Roman Senate's decision regarding the establishment of the Province of Judea nor any original document concerning a juridical arrangement such as was arrived at the creation of others of the many Roman provinces which existed at that time. True, we know precisely how a capital trial was initiated and carried out in Rome; but as to the procedure followed in legal trials in the provinces we are to a large extent driven to suppositions, and this still remains the case though our knowledge of Roman provincial law has happily been much enriched since Mommsen's day by the papyri and other remains discovered meanwhile in Egypt and Cyrenaica. The legal situation on the Jewish side is likewise obscure. One controversial point much discussed in the last two decades is whether the Jewish authority, the Sanhedrin, possessed full or at least partial jurisdiction in capital matters at that time, or not. If the competence of the native authority is regarded as proven, then the further question arises: According to what principles was the Jewish trial conducted? The Mosaic Law as contained in the Old Testament generally speaking only lays down broad principles. Now, we certainly possess in the Mishna treatise on the Sanhedrin, a detailed system of precepts for the conduct of a capital legal trial before the Sanhedrin, yet it is very doubtful whether these laws, which were codified toward the end of the second century A.D., were already in force at the time in which we are interested. The

third reason for the wide divergence of views is the indisputable fact that the aim of a considerable number of the scholars is more or less apologetic rather than purely historical. As for the writings of modern Jews on the trial of Jesus, it is apparent often enough that their concern is to vindicate their forefathers rather than to reconstruct a historical event. To be sure, this intention is not always so blatantly apparent as, for instance, in the article which Walter von Hauff published in 1932 in *Morgen*, or in the exhaustive work, *The Case of the Nazarene Reopened* (New York, 1948) by the American Jew, Hyman E. Goldin. But also among those Jewish authors who approach the problem with all the equipment of scientific methods—and we must not fail to acknowledge that we are indebted to many of these scholars for much valuable knowledge—one cannot always escape the impression that they try as far as possible to minimize the guilt of the Jews in the killing of Jesus. One can understand this effort, nor can one read without grief and shame the bitter and passionate complaints of Jewish authors about the immeasurable suffering which Christian or rather un-Christian fanaticism has heaped upon the Jews as the descendants of the “deicides.” The story of the passion of Jesus has truly become a story of the suffering of Jewry; the Lord’s Way of the Cross has become a *via dolorosa* of the Jewish people down the centuries. Nevertheless, it must be established that the interpolation of apologetic considerations, which of their nature are unfavorable to the scientific quest for truth, has only tended to deepen and aggravate the disunity of the researchers.<sup>6</sup>

It was the French Jew, Joseph Salvador, in his book published

<sup>6</sup> The author of the present work of investigation professes his unreserved adherence to the principle formulated by Paul FIEBIG: “It is taken completely for granted nowadays that science should examine the gospel reports in an absolutely unbiased spirit, i.e., purely in an endeavor to ascertain what the historical reality was. Science is not interested in incriminating the Jews and exonerating the Romans, or in incriminating the Romans and exonerating the Jews. What Pilate did does not justify our holding all Romans of all ages responsible. What Caiaphas and the other Jewish leaders of the time did is no reason for holding the whole Jewish people of that time and even of later times responsible” (in *ThStKr*, 104 [1932], 226 f.).

in 1828, *Histoire des institutions de Moïse et du peuple Hébreu*, who was the first to advance the Jewish standpoint positively. He left the gospel text unassailed in its essentials and in fact held that he could prove from it that Jesus was legally and justly condemned to death. The larger Jewish public, insofar as it had part in the matter, had acted *optima fide*; hence there could be no question of guilt on its part, so he maintained. The book, which created a sensation even beyond France and brought its author into collision with the criminal law, was the opening act of the conflict which is still being waged with learning and acumen but also with passion, in hundreds of books and articles, over the true evaluation of the traditional accounts of the trial of Jesus. Salvador's position was soon given up by the Jewish side.<sup>7</sup> Only J. Cohen, in his book, *Les Décides*, published in 1861, continued to argue on the same lines. The radical criticism of the sources by a David Friedrich Strauss offered a simpler means of shaking the traditional view to its foundations. The Rabbi Ludwig Philippson took up this method in his work published in Berlin in 1866, *Haben die Juden wirklich Jesum gekreuzigt?*, in which he defended the thesis that it was not the Jews but only the Romans who had condemned and executed Jesus. And in fact all the Jewish authors have used the same method since, even if some are more and some less radical in their suppression of inconvenient texts, and accordingly do not always arrive at quite the same results.

It is difficult to draw a clearly composed and more or less comprehensive picture of the present state of the scientific discussion. Generally speaking, two basic concepts are distinguished, namely, the justification theory and the incompetence theory. The representatives of the first-named view regard the trial as a legal process carried out in accordance with the Jewish and the Roman law. The representatives of the second theory see in the proceedings

<sup>7</sup> But it has been taken up again in our days, this time by the Italian jurist and advocate Giuseppe Sotgiu, in *Il processo di Gesù* (Rome, 1948). Regarding the personality of the author, cf. A. ALIOTTI, "Der Fall Sotgiu," *Rheinischer Merkur*, 9, no. 49 (Dec. 3, 1954).

before the Jewish authorities not a legal trial but at worst an overstepping of the bounds of competence. This classification does not give any adequate picture of the true state of the controversy, however, because within these two categories scholars are to be found whose views are totally different. Admittedly, the cardinal question is whether Jews as well as Romans were involved in killing Jesus and if so, how far were they involved. This aspect doubtless produces the easiest and most natural principle of classification. Five groups can then be distinguished, according to the degree to which they hold the Jews were involved in the tragedy of Good Friday: 1. exclusively; 2. predominantly; 3. to the same degree as the Romans; 4. to an unimportant extent; 5. not at all.

1. Already in Christian antiquity there were voices which loudly denied any participation of the Roman governor in the trial of Jesus. If according to the Acts of the Apostles, the Apostle Peter, in several of his discourses, accuses the Jews of having crucified Jesus, and Stephen calls them traitors and murderers, they certainly did not mean that the Jews alone were involved, but only meant to emphasize their moral guilt. Actually, in the first of his discourses, Peter declares that the Jews had "crucified and slain (the Messiah) by the hands of wicked men" (Acts 2:23). Most of the assertions about the Jews being the executioners of Jesus to be found in the apocrypha and the fathers of the Church must also be interpreted in this sense.<sup>8</sup> But there are other evidences of this view too. Perhaps the most remarkable of these is in the Codex Syrus Sinaiticus, a palimpsest manuscript containing an ancient Syrian text of the gospels, discovered in the Monastery of St. Catherine on Mount Sinai, in 1892. Here, at least in the

<sup>8</sup> The texts are assembled and examined by W. BAUER, *Das Leben Jesu im Zeitalter der neutestamentlichen Apokryphen* (1909), pp. 199-204. The exclusive guilt of the Jews is clearly and consistently asserted in the Gospel of Peter. This apocryphal work "trägt alles zusammen, was die Synoptiker und Johannes an Misshandlung Jesu hergeben wollen—gleichgültig von wem—und verzeichnet es im Schuldbuch der Juden" (W. BAUER, *op. cit.*, p. 203). In the writings of Justin Martyr, too, the Jews no longer appear merely as the intellectual authors of the crucifixion (*ibid.*, p. 202).

Gospel of St. Matthew, there is a description of the trial proceedings which, in contrast to our Greek text, makes it appear that it was the Jews alone who ill-treated, mocked and crucified Jesus. Some scholars, such as Adalbert Merx and Nathaniel Schmidt, are of the opinion that this account reflects the historical facts correctly.<sup>9</sup> But it is not difficult to show that the divergences of the Syrian from the Greek text are due to an apologetic bias, and hence are not original.<sup>10</sup> It is remarkable to find a tradition within Jewry itself corroborating this obviously anti-Jewish opinion. A passage in the Talmud, to be discussed later on, clearly presumes the condemnation and execution of Jesus to have been effected by Jewish bodies. M. Mieses regards this text as worthy of credence; Heinrich Graetz too agreed with him originally. Of the more recent authors who have examined this tradition seriously, Harold P. Cooke is worthy of mention.<sup>11</sup> But when we deal with the Talmud text we shall see that at least on this point it is of no historical value.

2. Very many Christian exegetes, particularly those versed in the history of jurisprudence, ascribe to the Jews the decisive share in the trial and death of Jesus and see Pilate only as the confirmer and executor of the Jewish verdict. The first to write upon this thesis was the Jena theologian and jurist, Johannes Steller, in his book *Pontius Pilatus defensus*, published in Dresden in 1674. In more recent times the same attitude has been expressed by Emil Schürer, Josef Felten, Ernst von Dobschütz, Johannes Merkel, Hermann Peter, Ernst Siefert, Walter Bauer, Paul Billerbeck, Josef Pickl and Theodor Mayer-Maly.<sup>12</sup> The most searching

<sup>9</sup> A. MERX, *Die vier kanonischen Evangelien nach ihrem ältesten bekannten Texte*, II, 1 (1902), 402 ff.; N. SCHMIDT, *The Prophet of Nazareth* (1905), pp. 206, 288.

<sup>10</sup> Cf. H. J. HOLTZMANN, "Die Marcus-Kontroverse in ihrer heutigen Gestalt," ARW, 10 (1907), 167-174; also W. BAUER, *op. cit.*, pp. 204-207.

<sup>11</sup> M. MIESES, *Der Ursprung des Judenhasses* (1923), p. 461; H. GRAETZ, *Geschichte der Juden von den ältesten Zeiten bis auf die Gegenwart*, III, 1 (4th ed., 1888), p. 245 (this view is discarded in the 5th ed., cf. p. 306 therein); H. P. COOKE, "Christ Crucified—and by Whom?" HJ, 29 (1930/31), 61-74.

<sup>12</sup> SCHÜRER, II, 209; J. FELTEN, *Neutestamentliche Zeitgeschichte*, I (2nd ed., 1925), 324 f.; E. VON DOBSCHÜTZ, "Der Prozess Jesu nach den Acta Pilati," ZNW, 3 (1902), 92; J. MERKEL, "Die Begnadigung am Passahfeste," ZNW, 6 (1905),

justification of this point of view is that of the Prague historian of jurisprudence, Robert von Mayr. He is of the opinion that the Roman procurator merely examined the Jewish verdict and, being ignorant of Jewish criminal law, confined himself to ascertaining whether the actions for which it had been given were also punishable under Roman law. According to him Pilate's decision was not the pronouncement of a verdict but an administrative measure, namely, the sanction for execution to be carried out.<sup>13</sup> Theodor Mommsen likewise considers that the procurator merely exercised his legal function of confirming, though, to be sure, first independently examining the question of guilt.<sup>14</sup> The Viennese jurist, Gustav Lippert, also subscribes to this view. The Munich professor of criminal law, Friedrich Doerr, likewise regards Pilate's decision not as a verdict in the technical sense but as a mere execution order, a view very recently defended with copious arguments by the Munich jurist, Wilhelm von Ammon. According to Martin Dibelius, the Sanhedrin decided on the death of Jesus and then delivered the Accused up to the procurator, who alone had power to carry out the death sentence. The latter did not open any trial, but merely had to decide whether the sentence was to be carried out. And he had decided for carrying it out.<sup>15</sup> The Basle theologian, Karl Ludwig Schmidt, considers it at least possible that the Jews entered an action against

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302; H. PETER, "Pontius Pilatus," *Neue Jahrbücher für das klassische Altertum*, 19 (1907), 10; E. SIEFERT, "Zum Prozess Jesu," *Archiv für Kriminal-Anthropologie und Kriminalistik*, 21 (1906), 315 f.; W. BAUER, *op. cit.*, p. 186 f.; BILLERBECK, *op. cit.*, I, 1026; J. PICKL, *Messiaskönig Jesus* (1935), p. 121; T. MAYER-MALY, "Das Auftreten der Menge im Prozess Jesu und in den ältesten Christenprozessen," *Osterreichisches Archiv für Kirchenrecht*, 6 (1955), 239.

<sup>13</sup> R. VON MAYR, "Der Prozess Jesu," *Archiv für Kriminal-Anthropologie und Kriminalistik*, 20 (1905), 299.

<sup>14</sup> T. MOMMSEN, *Römisches Strafrecht* (1899), p. 240; cf. ZNW, 3 (1902), 199; G. LIPPERT, *Pilatus als Richter* (1923), pp. 16-18.

<sup>15</sup> F. DOERR, "Der Prozess Jesu," *Archiv für Strafrecht und Strafprozess*, 55 (1908), 51. Likewise in his independent monograph, *Der Prozess Jesu in rechtsgeschichtlicher Beleuchtung* (1920), p. 62 (from which we shall quote henceforth); W. VON AMMON, "Das Strafverfahren gegen Jesus von Nazareth," *Nachrichten der Evangelisch Lutherisch Kirche in Bayern*, 8 (1953), 69-72; M. DIBELIUS, *Jesus* (1939), p. 115.

Jesus before Pilate, in that they requested of him the confirmation of their death sentence for blasphemy; but at the same time he leaves open the possibility that a fresh trial was initiated by Pilate following their accusation of political messiahship.<sup>16</sup>

3. The opinion that the Jews and Romans were, legally considered, about equally involved in the events which led to the death of Jesus, is not an uncommon one. Its representatives include those authors such as Oskar Holtzmann, H. M. Cheever, Walter M. Chandler, Theodor Zahn, Paul Feine, Rudolf Knopf, P. Roué, Karl Kastner, S. Saladrighes, Karl Pieper, and others,<sup>17</sup> who assume a sentence to have been passed both by the Sanhedrin and by the procurator. This point of view is represented with particular emphasis by the Catholic exegete Georg Aicher. Jesus was condemned to death both by the Sanhedrin and by Pontius Pilate, he maintains. Pilate's decision was not an order for execution but a death sentence and was uninfluenced either by Jewish law or by the death sentence of the Jewish court.<sup>18</sup> Ernst Springer has agreed fully with Aicher in this. To him it is clear that the Jewish authorities condemned Jesus to death as an alleged criminal, but did not carry out the sentence. Instead, they delivered Him over to the Roman governor under an accusation of high treason. And the latter, not by way of confirmation of the Jewish verdict which, on the contrary, he ignored, but by virtue of his own power, sentenced Jesus according to Roman law for high treason and con-

<sup>16</sup> K. L. SCHMIDT, "Der Todesprozess des Messias Jesus," *Judaica*, 1 (1945), 32.

<sup>17</sup> O. HOLTZMANN, *Neutestamentliche Zeitgeschichte* (1895), pp. 174 f.; *idem*, *Christus* (2nd ed., 1914), pp. 87 f.; H. M. CHEEVER, "The Legal Aspects in the Trial of Jesus," *Bs*, 60 (1904), 495-509; W. M. CHANDLER, *The Trial of Jesus*, I (1925), xvi; T. ZAHN, *Das Evangelium des Johannes* (6th ed., 1921), p. 632; *idem*, *Grundriss der Geschichte des Lebens Jesu* (1928), pp. 70-72; P. FEINE, *Jesus* (1930), pp. 110 f.; R. KNOPF and H. WEINEL, *Einführung in das Neue Testament* (4th ed., 1934), p. 255; P. ROUÉ, *Le Procès de Jésus* (1924), pp. 59 f.; K. KASTNER, *Jesus vor Pilatus* (1912), pp. 178 f.; S. SALADRIGHES, "El proceso religioso de Jesús," *AST*, 4 (1928), 49-116; K. PIEPER, *Heimat und Leben unseres Herrn Jesus Christus* (1947), pp. 185, 190; F. M. BRAUN, *Jesus Christus in Geschichte und Kritik* (1950), pp. 140 f. J. VOGT, "Christenverfolgung," *RAC*, I (1954), 11, also belongs to this group.

<sup>18</sup> G. AICHER, *Der Prozess Jesu* (1929), pp. 34 f.

demned Him to the Roman punishment of crucifixion.<sup>19</sup> Cardinal Theodor Innitzer, though he speaks, it is true, of a sentence of death passed by the Sanhedrin with all formality, expresses himself less definitely, and prefers to leave the question open whether the judgment of Pilate was also a formal condemnation.<sup>20</sup> Jacques M. Vosté, H. van der Loos, G. E. W. van Hille, Taylor G. Bunch, Giuseppe Ricciotti, Aristide Manassero, J. A. Drossaart Bentfort, and, above all, Leopold Wenger, distinguish two independent trials, a religious one before the Sanhedrin and a political one before the court of the governor.<sup>21</sup>

But representatives of an entirely different conception are also included in this group. In his world-famous book, *Il processo di Gesù*, which first appeared in 1904 and has been translated into almost every civilized language, the Florentine advocate, Giovanni Rosadi, defended the exciting but completely untenable thesis that the Jewish judges could not and did not pass a death sentence, and that Pilate did not sentence Jesus either but illegally delivered him over to the mob. The British jurist, Lord Shaw of Dunfermline, who at one time was Lord of Appeal, represents a view pretty close to that of Rosadi.<sup>22</sup>

#### 4. The view that the Romans and not the Jews were mainly

<sup>19</sup> E. SPRINGER, "Der Prozess Jesu," *Preussische Jahrbücher*, 229 (1932), 150.

<sup>20</sup> Theodor Cardinal INNITZER, *Leidens- und Verklärungsgeschichte Jesu Christi* (4th ed., 1948), pp. 162, 237.

<sup>21</sup> J.-M. VOSTÉ, *De passione et morte Jesu Christi* (1937), pp. 183-189; H. VAN DER LOOS, *Jezus Messias-Koning* (1942), pp. 184, 196; G. E. W. VAN HILLE, "De ultima Iesu vitæ nocte sec. Ioann. XVIII, 1-31," *Mnem* (3rd ser.), 10 (1942), 242; T. G. BUNCH, "Behold the Man" (1946), p. 70; F. J. POWELL, *The Trial of Jesus Christ* (1948), *passim*; G. RICCIOTTI, *The Life of Jesus* (1947), p. 609; A. MANASSERO, *Ecce Homo, Storia del processo di Gesù* (1952), pp. 106-108, 335; J. A. DROSSAART BENTFORT, "Enige beknopte beschouwingen met betrekking tot de processen van de Here Jezus Christus en van de Apostel Paulus," *GTT*, 55 (1955), 33-68, esp. 55 f.; L. WENGER, *Die Quellen des römischen Rechts* (1953), p. 287, and nn. 11-12; *idem*, "Über erste Berührungen des Christentums mit dem römischen Recht," *Miscellanea G. Mercati*, 5 (1946), 577.

<sup>22</sup> G. ROSADI, *Il processo di Gesù* (1904; Ger. ed., 1926), pp. 116-122, 220-222, 227; Lord SHAW of Dunfermline (from 1929, Lord Craigmyle), *The Trial of Jesus Christ* (1928), pp. 24, 52 f. According to H. DANIEL-ROPS also (*Jesus and His Times* [1954], pp. 497-502, 522), neither the Sanhedrin nor Pilate pronounced a verdict, "it is certainly quite improper to speak of a legal 'trial' in this connection" (p. 526).

responsible for the condemnation of Jesus emerges in various forms.

a. There is a certain exoneration of the Jews implicit in the opinion that, though a genuine trial did take place, this was initiated and carried out by a minority, namely, by the priestly caste of the Sadducees, who feared for their ample incomes and were completely subservient to Rome. This interpretation is represented emphatically by Daniel Chwolson and G. A. Barton.<sup>23</sup> Others, such as Heinrich Graetz and Samuel Bäck, are of the opinion that Jesus was condemned not by the Greater Sanhedrin but by the Lower Sanhedrin of twenty-three members.<sup>24</sup>

b. Solomon Zeitlin, who distinguishes two Sanhedrins, a religious and a political one, existing during the time of Roman rule in Palestine, believes he can prove that the one which assembled in the house of Caiphas was a political Sanhedrin, and that hence the religious Sanhedrin and the Jewish people had nothing to do with the trial of Jesus. The political Sanhedrin was, he asserts, a tool in the hands of the Roman rulers and consisted solely of spineless adherents of the high priest Caiphas, whom Zeitlin calls the Quisling of his people. This political body was not bound by legal rules and could therefore be called together at any time, day or night, on working days or on feast days, and at any place which seemed convenient. They had Jesus arrested by a Roman cohort, had cross-examined Him during that same night, and in the morning had handed Him over as a dangerous rebel to the governor, who alone was competent to judge political offenses and who then condemned Jesus for claiming the title of king, and handed Him over to the executioners.<sup>25</sup>

c. Others, again, assume that no official court of any kind, but

<sup>23</sup> D. CHWOLSON, *Das letzte Passahmahl Christi und der Tag seines Todes* (2nd ed., 1908), p. 121; G. A. BARTON, "On the Trial of Jesus before the Sanhedrin," *JBL*, 42 (1922), 205-211.

<sup>24</sup> H. GRAETZ, *Geschichte der Juden von den ältesten Zeiten bis auf die Gegenwart*, III, 1 (4th ed., 1888), 305; S. BÄCK, *Die Geschichte des jüdischen Volkes und seiner Literatur vom babylonischen Exil bis auf die Gegenwart* (3rd ed., 1906), pp. 136 f.

<sup>25</sup> S. ZEITLIN, *Who Crucified Jesus?* (2nd ed., 1947), pp. 172 and *passim*.

only a wild crowd of irresponsible fanatics, who consisted mainly of the Sadducee supporters of Caiphas had taken action on the Jewish side. These people had improvised a sham trial. The Jewish action is interpreted in this way by J. M. Jost, A. M. S. Mayer, J. Vargha, Jakob Hamburger, Aaron P. Drucker, Alfred Edersheim, and more recently also by Georg Bertram.<sup>26</sup>

d. Far more frequently, one encounters the view that a formal trial was carried out only by the Roman forum, while the Jewish authorities had merely carried out a preliminary cross-examination for the purpose of obtaining material for the charge to be preferred before Pilate. This theory, which was first put forward in the year 1738 by Anton Balthasar von Walther (*Juristisch-historische Betrachtungen über die Geschichte vom Leiden und Sterben Jesu Christi*), in more recent times has gained the assent of Joseph Jacobs, Théodore Reinach, Wilhelm Brandt, Paul Wilhelm Schmidt, Paul Wilhelm Schmiedel, Alfred Loisy, Henri Regnault, Maurice Goguel, Wilhelm Weber, Burnett Scott Easton, Richard Wellington Husband, Herbert Danby, Claude G. Montefiore, E. Jacob, Max Radin, F. Crawford Burkitt, Walther von Hauff, Joseph Klausner, Paul Fiebig, Elias Bickermann, Arthur T. Cadoux, Walter Bienert, Ernst Lohmeyer, A. T. Olmstead, Jean Imbert, Marcel Braunschwig, A. E. J. Rawlinson, Robert Besnier, Vincent Taylor, Werner Georg Kümmel, T. W. Manson, Oscar Cullmann and others.<sup>27</sup> The reasons given are that

<sup>26</sup> J. M. JOST, *Geschichte des Judentums und Seiner Secten*, I (1857), 402-409; A. M. S. MAYER, *Geschichte der Strafrechte* (1876), § 57; J. VARGHA, *Die Verteidigung in Strafsachen* (1879), pp. 13 ff.; J. HAMBURGER, *Jesus von Nazareth* (1895), pp. 38 ff.; A. P. DRUCKER, *The Trial of Jesus from Jewish Sources* (1908), *passim*; A. EDERSHEIM, *The Life and Times of Jesus the Messiah*, II (12th ed., 1907), 553; G. BERTRAM, *Die Leidensgeschichte Jesu und der Christuskult* (1922), p. 61.

<sup>27</sup> J. JACOBS, *Jesus as Others Saw Him* (1895), pp. 140 ff.; T. REINACH, "Josèphe sur Jésus," *Revue des Études Juives*, 35 (1897), 15 ff.; W. BRANDT, *Die evangelische Geschichte und der Ursprung des Christentums* (1893), pp. 67, 137; P. W. SCHMIDT, *Geschichte Jesu*, I (1904), 170; P. W. SCHMIEDEL, *Das vierte Evangelium gegenüber den drei ersten* (1906), p. 98; A. LOISY, *Les évangiles synoptiques*, II (1908), 599 f., 610; *idem*, *L'évangile selon Marc* (1912), p. 435; H. REGNAULT, *Une province procuratorienne au début de l'empire Romain. Le procès de Jésus-Christ* (1909), p. 72; M. GOGUEL, "Juifs et Romains dans l'histoire

Luke and John and also Josephus make no mention of a condemnation of Jesus by the Sanhedrin; that, on the other hand, the account given by Mark (and Matthew) could be attributed to anti-Jewish prejudice. Or these scholars refer to the Mishna, according to which the trial by the Sanhedrin reported by the evangelists would have been illegal. Many also assert that the Sanhedrin of that time had no competence whatsoever in the matter of capital charges; Besnier alone puts forward the additional point that Pilate's invitation to the people to choose between Jesus and Barabbas would have been juridically impossible and politically unwise if a regular trial before the Sanhedrin had preceded the Roman proceedings.

5. That the Jews had no part whatsoever in the condemnation and execution of Jesus, Ludwig Philippson, as already mentioned, has tried to prove. His conviction is that only the denunciation to Pilate can be attributed to the Jewish side, and to a disciple of

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de la passion," RHR, 62 (1910), 314 ff. (In his article, "Le procès de Jésus," *Foi et Vie*, 47 [1949], 395-403, GOGUEL reduces the participation of Pilate to a minimum; the latter may only have said to Jesus: "Tu es le roi des Juifs? Eh bien, tu serais crucifié" [p. 403].) W. WEBER, "Eine Gerichtsverhandlung vor Kaiser Trajan," *Hermes*, 50 (1915), 47-92; B. S. EASTON, "The Trial of Jesus," *AJT*, 19 (1915), 444; R. W. HUSBAND, *The Prosecution of Jesus* (1916), p. 135; H. DANBY, "The Bearing of the Rabbinical Code on the Jewish Trial Narratives in the Gospels," *JThSt*, 21 (1920), 51-76, esp. 75 f.; C. G. MONTEFIORE, *The Synoptic Gospels*, I (2nd ed., 1927), 351 f.; E. JACOB, *Encyclopædia Judaica*, V (1930), 527 f.; M. RADIN, *The Trial of Jesus of Nazareth* (1931), pp. 227 ff.; W. VON HAUFF, "Der Prozess Jesu im Lichte der neuesten Forschung," *Der Morgen*, 7 (1931), 281; F. C. BURKITT, *JThSt*, 33 (1931), 64-66; P. FIEBIG, "Der Prozess Jesu," *ThStKr*, 104 (1932), 224-226; J. KLAUSNER, *Jesus von Nazareth* (2nd ed., 1934), p. 462; E. BICKERMANN, "Utilitas crucis," RHR, 112 (1935), 193 f.; A. T. CADOUX, *The Sources of the Second Gospel* (1935), p. 236; W. BIENERT, *Der älteste nichtchristliche Jesus-bericht* (1936), p. 262; E. LOHMEYER, *Das Evangelium des Markus* (1937), p. 331; A. T. OLMSTEAD, *Jesus in the Light of History* (1942), p. 228; J. IMBERT, *Est-ce Pilate qui a condamné Notre Seigneur Jésus-Christ?* (1947), *passim*; M. BRAUNSCHWIG, *Le vrai visage d'Israël* (1948), p. 638; A. E. J. RAWLINSON, *The Gospel according to St. Mark* (7th ed., 1949), pp. 219 f.; R. BESNIER, "Le procès du Christ," *RHDr*, 18 (1950), 204 f., 208; V. TAYLOR, *The Gospel according to St. Mark* (1952), p. 570; W. G. KÜMMEL, *Verheissung und Erfüllung* (2nd ed., 1953), pp. 43 f.; E. SJÖBERG, "Jesus Kristus," *Svenskt Bibliskt Uppslagsverk*, I (1948), 1051; T. W. MANSON, *The Servant-Messiah* (1953), p. 86; O. CULLMANN, *Das Neue Testament und der Staat* (1956), pp. 18-28, 31 f.

Jesus, moreover. The gospels were written more than a century after the event (!)—and in them the story had been falsified with an eye to the pagan world which was favorably disposed toward the rising Christian cult.<sup>28</sup> The Protestant theologian Gustav Volkmar has asserted that the evangelists could not have had any information of the proceedings before the Sanhedrin and he has therefore come to the conclusion that their reports are unhistorical. Jesus had been condemned as a rebel without lengthy cross-examination in a brief trial by Pilate.<sup>29</sup> The Rabbi Isaac M. Wise has gone still further, and disputed not only the condemnation of Jesus by the Sanhedrin, but even the crucifixion.<sup>30</sup> Another Rabbi, Ignaz Ziegler, has asserted that the Jews had no reason to take steps against Jesus and in fact had not done so; that the quarrel had only flared up when Paul had proclaimed freedom from the Law.<sup>31</sup> According to Simon Bernfeld "the whole trial before the Sanhedrin is nothing but an invention of later date."<sup>32</sup> If a Jewish court had had part in the matter, the Jewish religious historian Manuel Joël has argued, the sentence would not have been carried out in the Roman fashion. The procurator and he alone was the executioner of Jesus, and only a few unscrupulous representatives of the priestly caste, if any Jews at all, would have approved his action.<sup>33</sup> This is also basically the standpoint of the American Jew, Emil G. Hirsch.<sup>34</sup> The German Jew, J. Norden,

<sup>28</sup> L. PHILIPPSON, *Haben die Juden wirklich Jesus gekreuzigt?* (2nd ed., 1901), p. 44 f.

<sup>29</sup> G. VOLKMAR, *Die Evangelien* (1870), pp. 588–591.

<sup>30</sup> I. M. WISE, *The Martyrdom of Jesus of Nazareth* (1874), pp. 108 f. Besides citing Acts 5:30 and 10:39 (in connection with which, see *below*, p. 26), he refers to the fact that the Basilidians denied the crucifixion of Jesus.

<sup>31</sup> I. ZIEGLER, *Der Kampf zwischen Judentum und Christentum in den ersten drei Jahrhunderten* (1907), pp. 52 f., 56, 73 f. J. Jocz, *The Jewish People and Jesus Christ* (1949), pp. 43 f., opposes ZIEGLER and emphasizes particularly the fact that Paul himself was a persecutor of the Christians before his conversion.

<sup>32</sup> S. BERNFELD, "Zur ältesten Geschichte des Christentums," *Jahrbücher für jüdische Geschichte und Literatur*, 13 (1910), 117.

<sup>33</sup> M. JOËL, *Blicke in die Religionsgeschichte*, II (1883), 64 ff. The argument mentioned emerges again in other authors, for instance RADIN, *op. cit.*, p. 256; KLAUSNER, *op. cit.*, p. 484; and E. G. HIRSCH, *The Crucifixion* (3rd ed., 1921), p. 55.

<sup>34</sup> E. G. HIRSCH, *op. cit.*, *passim*. P. FRIEDE, *Der Kreuzestod Jesu und die ersten*

will only admit that influential Jewish circles against whom Jesus had inveighed, had drawn the attention of the Roman governor to Him, and that the latter had then delivered Him up to be crucified as a politically dangerous agitator.<sup>35</sup> While some degree of participation on the part of the high priest is admitted by Jewish scholars as a whole, the Prague Jew, Karl Katz, seeks to prove that Caiphas actually tried to save Jesus from Pilate: "Caiphas loved and revered Jesus. Never did he denounce or betray Him."<sup>36</sup> To the Marxist, Karl Kautsky, the only historically tenable point is the sentence that Jesus was condemned and crucified by Pilate on account of His claim to kingship, that is to say, for high treason. All the rest is invention on the part of the "ignorant, silly and foolish evangelists."<sup>37</sup> The Galician Jew, H. Hammer, has even gone so far as to make the fantastic assertion that Jesus is identical with the Samaritan pseudo-prophet mentioned by Josephus (*Antiquities* 18. 4. 1. § 85), whom Pilate had executed along with his fellow-conspirators.<sup>38</sup> According to Robert Eisler, Jesus was arrested by the Romans, presented to the Jewish authorities for a brief, unprepared preliminary cross-examination on the way to the Prætorium, and then condemned to death by Pilate after a summary trial, held on the lines of a court-martial. "What was a brief but noisy and stormy halt on the way to the Prætorium became in the Christian account a formal legal trial by the Sanhedrin."<sup>39</sup> The Leyden scholar, Martin David, disputes the participation of the Jews, supporting his contention on the Gospel of St. John, which makes no mention of a condemnation by the Sanhedrin and is deserving of belief as being the oldest evangel-

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*Christenverfolgungen* (1913), p. 85, maintains essentially the same position, as do M. HYAMSON (JQR, 11 [1920/21], 96 f.) and M. HUNTERBERG (*The Crucified Jew* [1927], p. 52).

<sup>35</sup> J. NORDEN, "Jesus von Nazareth in der Beurteilung der Juden einst und jetzt," *Jüdische Literarische Zeitung*, June 18, 1930, no. 25.

<sup>36</sup> K. KATZ, *Jesus und das Judentum* (1926), p. 6.

<sup>37</sup> K. KAUTSKY, *Der Ursprung des Christentums* (1908), pp. 430-432.

<sup>38</sup> H. HAMMER, *Tractat vom Samaritanermessias* (1913), *passim*.

<sup>39</sup> EISLER, II, 144-147, at 146.

ical document (1).<sup>40</sup> The historicity of the Jewish trial or even of a mere preliminary cross-examination by the Sanhedrin has been disputed by the Berlin Church historian, Hans Lietzmann,<sup>41</sup> whose views have met with much support.<sup>42</sup>

A passionate representative of this hypothesis is the writer Pierre van Paassen, a native of Holland, now living in the U.S.A. To him, the unhistorical character of the gospel reports of the Sanhedrin proceedings is obvious from the fact that they mention details which are diametrically opposed to the Jewish legal procedure described in the Mishna. If Pilate had had to ratify a Jewish sentence, he argues, then Jesus would have been stoned, strangled, burned or beheaded. But it has been established that He suffered death by crucifixion. Hence it follows that no other court of justice than the Roman occupation authorities had arrested, condemned and executed Jesus.<sup>43</sup> On similar grounds Solomon Grayzel, Charles Guignebert, Jules Isaac and S. B. Hoenig dispute the participation of a Jewish court.<sup>44</sup>

This review may awaken the impression that at this stage it is really impossible to arrive at any sure conclusions regarding the true course of the trial of Jesus. Such a pessimistic view is unjustified, however. Many of the theories cited above prove so clearly

<sup>40</sup> In a lecture on "The Trial of Jesus Considered in the Light of the History of Jurisprudence" delivered on February 26, 1936, before the Genootschap voor de Joodsche Wetenschap in Nederland at Amsterdam (cf. DROSSAART BENTFORT, *op. cit.*, p. 41).

<sup>41</sup> H. LIETZMANN, "Der Prozess Jesu," SAP (phil.-hist., XXIII-XIV, 1931), pp. 313-322; W. Bauer writes in ThLZ, 55 (1930), 558: "Ich zweifle nicht, dass Jesus von Pontius Pilatus als lästiger Störer der Ordnung und politischer Unruhestifter ans Kreuz geschlagen wurde"; G. HÖLSCHER in ThBl, 12 (1933), 133: "Die Verhandlung vor dem Synedrium Markus 14:55-64 ist Legende."

<sup>42</sup> Martin BUBER (*Zwei Glaubensweisen* [1950], p. 109, n. 2), would appear to be of the same mind for, citing LIETZMANN, he speaks of "the trial story, which is to be regarded as substantially unhistorical." Also, G. SCHILLE, "Das Leiden des Herrn," ZTK, 52 (1955), 200 f., and G. BORNKAMM, *Jesus von Nazareth* (1956), p. 150 f.

<sup>43</sup> P. VAN PAASSEN, *Why Jesus Died* (1949), pp. 141-149.

<sup>44</sup> S. GRAYZEL, *A History of the Jews* (1947), pp. 133 f.; C. GUIGNEBERT, *Jésus* (1947), p. 569 and elsewhere; J. ISAAC, *Jésus et Israël* (1948), p. 509; S. B. HOENIG, *The Great Sanhedrin* (1953), p. 210; S. ROSENBLATT, "The Crucifixion of Jesus from the Standpoint of Pharisaic Law," JBL, 75 (1956), 315-321.

to be products of an undisciplined and capricious method that they cannot be regarded as scientific, or taken seriously as solutions of our problem. And as for the remaining interpretations, a thorough examination of the sources must and will show which of these theories is nearest to the truth. Hence, the question which has now to be elucidated is this: What sources, Christian and non-Christian, are at our disposal in our effort to reconstruct the events which led to the death of Jesus?

## 2. THE SOURCES

AN OFFICIAL report of the trial of Jesus has not been preserved to us. There is no reason to assume that the procurator of Judea was obliged to send a report to Rome about trials for high treason even when the accused was, like Jesus, only a *peregrinus*, i.e., a native of the province, without the rights of a Roman citizen.<sup>1</sup> Whether this actually happened in the case of Jesus, we do not know. Some writers of antiquity, first Justin, then Tertullian, indicate that a report from Pilate to Tiberius concerning the execution of Jesus was preserved in the imperial archives of Rome.<sup>2</sup> Obviously they do not know the document themselves but only assume its existence. In the beginning of the fourth century the anti-Christian Emperor Maximinus Daza (d. 313) had the "Acts of Pilate and Jesus" published, and ordered that these should be brought to the knowledge of the people in town and country and learned by heart by the children in the elementary schools. Eusebius,<sup>3</sup> through whom we know of this episode in the fight against the Church, tells us nothing of the contents of these documents except that they were full of blasphemies against Jesus and shifted the time of the crucifixion to the fourth consulate of Tiberius, the seventh year of his rule, i.e., Easter of the year 21.

<sup>1</sup> See S. LÖSCH, *Diatagma Kaisaros* (1936), pp. 74 f.

<sup>2</sup> Justin Martyr *Apology* i. 35. 9; i. 48. 3; cf. i. 38. 7; Tertullian *Apology* 5. 2; 21. 20; also Eusebius *Ecclesiastical History* ii. 2. In the field of popular literature, J. KIPPES ("Sandte Pilatus Akten über Christus nach Rom?," *Katholischer Digest*, 4 [1950], 310-315) answers his question in the affirmative.

<sup>3</sup> *Ecclesiastical History* ix. 5. 1; ix. 7. 1 ff.; i. 9. 3 f.

<sup>4</sup> That this is false is also shown by the coins of the procurators, as P. L. HEDLEY, "Pilate's Arrival in Jerusalem," *JThSt*, 35 (1934), 56 f., shows. Cf. also U. HOLZMEISTER, "Wann war Pilatus Prokurator von Judäa?," *Bi*, 13 (1922), 228-232.

Because of this wrong dating<sup>4</sup>—in fact, Pilate did not come to Judea earlier than the year 26 (cf. *Antiquities* xviii. 2. 2. § 35)—and because of the primitive and popular character of the composition we must assume, first, that it is not an official report of proceedings at all but a brazen invention, and second, that at least at that time no authentic report of the case of Jesus existed in the imperial archives in Rome.

The Christian "Acts of Pilate,"<sup>5</sup> widely circulated in the Middle Ages, which form the first part of the apocryphal "Gospel of Nicodemus," did not come into existence before the fourth century and are just as worthless for the historian as the apocryphal "Letter of Pilate to Claudius" which may well date from toward the end of the second century. In recent times certain scholars have believed they could identify the authentic command of Pilate for the arrest of Jesus in the so-called "Epistle of Lentulus,"<sup>6</sup> but this apocryphon has been proved to be a forgery of the thirteenth or fourteenth century.

Hence we see that official Roman documents concerning Pilate's proceedings against Jesus have not been preserved for us. But are there not, perhaps, some reports concerning the death of Jesus, which could claim to be worthy of credence, to be found in the rich heritage of Jewish tradition? \*

A so-called "baraita" in the Tractate *Sanhedrin* (43a) of the Babylonian Talmud may be considered in this connection. It reads as follows:

"Tradition tells that on the Eve [of the Sabbath and on the Eve] of the Passover Jeshu [of Nazareth] was hanged. A crier<sup>7</sup> went before him for forty days: He should be stoned, because he has bewitched and seduced and alienated Israel. Let everyone who knows of a justification for him come and establish it for him.

<sup>4</sup> More detailed examination in E. VON DOBSCHÜTZ, "Der Prozess Jesu nach den Acta Pilati," ZNW, 3 (1902), 89-114; T. MOMMSEN, "Die Pilatusakten, ZNW, 3 (1902), 198-205; K. KASTNER, *Jesus vor Pilatus* (1912), pp. 126-141.

<sup>5</sup> Thus EISLER, II, 321 ff.; cf. on the other hand, E. EISENTRAUT, LThK, VI, 487 and M. GOGUEL, *Jésus* (2nd ed., 1950), p. 80, n. 1.

But no justification was found for him and so he was hanged on the eve of the Passover."<sup>7</sup>

Many scholars<sup>8</sup> maintain that this text does not refer to Jesus of Nazareth at all but to one Jeshu who lived about 100 B.C. and was a pupil of the Rabbi Jehoshua ben Perachja. In this contention they rely upon b. *Sanhedrin* 107b. Now, it is quite correct that the Rabbi's pupil Jeshu named in b. *Sanhedrin* 107b is identical with the Jeshu of our *baraita* in the opinion of the later Talmudists; for it is said of each of the two that he had practiced witchcraft, led Israel into sin and made her unfaithful. But these features, identical with those of the Jeshu of *Sanhedrin* 43a, were only applied subsequently to the rabbi's pupil. In the parallels to b. *Sanhedrin* 107b (b. *Sota* 47a and p. *Chagiga* 77d) the rabbi's pupil is as yet nameless. The identification with Jeshu is first to be found in *Sanhedrin* 107b, where it is introduced as the opinion of an authority on the Babylonian Talmud.<sup>9</sup> That none other than Jesus of Nazareth is meant in *Sanhedrin* 43a is likewise admitted by Joseph Klausner and Jakob Zallel Lauterbach.<sup>10</sup> Moreover, the suffix "the Nazarene" (*ha-nosri*) is so well attested that H. L. Strack takes it into the text without brackets. Besides, the shortened form of the name, Jeshu, is never used for any of the seven Jeshuas of the Old Testament, or for Jeshua ben Sirā; hence one must assume that Jeshu is a deliberate truncation<sup>11</sup>

<sup>7</sup> H. L. STRACK, *Jesus, die Häretiker und die Christen nach den ältesten jüdischen Angaben* (1910), p. 18; J. AUFHAUSER, *Antike Jesuszeugnisse* (2nd ed., 1925), pp. 50-53. The words in the first brackets are from an old Florentine MS, those in the second from a Munich MS and other sources. The text which directly follows in the Talmud does not belong to the *baraita*, but originates from later times and can therefore be dismissed.

<sup>8</sup> Finally J. JEREMIAS, *Die Abendmahlsworte Jesu* (2nd ed., 1949), p. 12, n. 7; cf. also EISLER, I, 492 f., and L. GOLDSCHMIDT, *Der babylonische Talmud*, VIII (1933), 632, n. 20.

<sup>9</sup> Cf. A. MEYER, "Jesus, Jesusjünger und das Evangelium im Talmud und verwandten jüdischen Schriften," *Handbuch zu den neutestamentlichen Apokryphen* edited by E. HENNECKE (1904), pp. 47-71, esp. 57-59.

<sup>10</sup> J. KLAUSNER, *Jesus von Nazareth* (2nd ed., 1934), pp. 29 f.; J. Z. LAUTERBACH, *Rabbinic Essays* (1951), pp. 481-490, esp. 488.

<sup>11</sup> STRACK, *op. cit.*, p. 18. H. J. SCHONFIELD, *According to the Hebrews* (1937), p. 221, asserts that Jeshu is the abbreviation of Jeshua in North Palestine.

and always means Jesus of Nazareth. Finally, besides the identity of the names, a fact worthy of note is that the reproaches leveled against the Jeshu of the Talmud were also leveled against Jesus of Nazareth according to the New Testament. To amplify the story of the rabbi's pupil with features taken from the (Jewish interpretation of the) story of Jesus of Nazareth was very natural; for two reasons: that the latter, like Jesus, was regarded as an apostate, and like Jesus also, had lived for a time in Egypt. The anachronism which resulted from the identification of the one with the other is definitely something of which we may believe the later Talmudists quite capable. Perhaps King Jannes (104-78 B.C.) has been confused with King Herod I.<sup>12</sup>

Although the Talmud text dates from the second century, on closer scrutiny the information concerning the accusations, the crier, and the manner of death prove valueless.<sup>13</sup> The assertion that Jesus had been condemned as a corrupter and an instigator to apostasy finds its explanation in the situation obtaining in the second century, when Christianity presented the picture of a great and distinct breakaway, a "heresy" from Judaism. The accusation of witchcraft was based upon the fact that the miracles of Jesus were not denied even by the rabbis, but as in the lifetime of Jesus Himself, they were attributed to diabolical influences. The assertion that the Jews had delayed His execution for forty days in order to give a chance for defense is clearly the answer of Jewish apologists to the Christian story of the passion, according to which the proceedings were rushed through in the greatest haste, and witnesses who might have testified on behalf of Jesus did not come forward. The statement regarding the mode of death is curious. The words "he was hanged" are capable of various interpretations. When it is said that the crier had announced stoning, this could mean that Jesus had been hung from a post after hav-

<sup>12</sup> Josephus *Antiquities* xiv. 9. 3-5. § 163-184; cf. also BILLERBECK, I, 84 f.

<sup>13</sup> This opinion is shared by KLAUSNER, *op. cit.*, pp. 30 f., and LAUTERBACH, *op. cit.*, pp. 490-497.

ing been stoned, in accordance with Jewish custom. Lauterbach,<sup>14</sup> who represents this interpretation, also finds a similar tradition regarding the death of Jesus in Acts 5:30 and 10:39. However, there can be no question of that. The ambiguous expression "hanged" in these two texts is to be understood in the light of unequivocal statements in Acts 2:36 and 4:10, and interpreted as synonymous with crucifixion. Now, in Acts 10:39 it is also stated clearly that the hanging did not follow the execution but preceded it, or rather that the execution consisted of hanging. Paul also applies the expression "hanged" (Gal. 3:13) to Jesus the Crucified (Gal. 3:1; I Cor. 2:8, etc.), and even Josephus is acquainted with this wording.<sup>15</sup> If the Talmud text is really to be understood as referring to an additional punishment after execution by stoning, then it is very surprising indeed that stoning is not mentioned as the actual mode of execution. But if one takes the expression as synonymous with crucifixion, in accordance with the accustomed use of the term as discussed above, then it is clear that there is a striking discrepancy between that assertion and the announcement of the crier. Apparently the Talmud tradition represents an effort to reconcile the historical reality somehow or other with the fiction of a purely Jewish trial. As a seducer of the people Jesus would have had to be stoned by the Jews, but His death on the Roman cross was too well known to allow of denial. Hence, Jewish tradition speaks of hanging as the Jewish mode of punishment which, without of course being a real death penalty, bore the closest resemblance to crucifixion. However one interprets this Talmud note, it does not square and proves unreliable. The one detail which does not give rise to the suspicion of being distorted for a purpose is the statement of the time of the execution. One must leave out of account the fact that the death of Jesus is placed on the eve of the Sabbath in agreement with the gospels, as the testimony of the Talmud manuscripts is not unani-

<sup>14</sup> *Op. cit.*, p. 495.

<sup>15</sup> *The Jewish War* vii. 6. 4. § 202: Bassus "had a *cross* erected, as if he were about to *hang* Eleazar upon it." Cf. also Luke 23:39.

mous on this point. The placing of the event on the eve of the Passover, on the contrary, is asserted beyond all doubt. Here the *baraita* agrees, surprisingly, with the statement in St. John's Gospel which, in contrast to the Synoptics, places the death of Jesus on the fourteenth of Nisan (19:14). How is this agreement to be explained? Dependence on St. John's Gospel has been suggested,<sup>16</sup> but this explanation is not satisfying. To begin with, it is highly improbable that the rabbis, in view of their basic attitude toward Christianity, should have borrowed from a Christian book; and besides, in no single feature does the *baraita* show itself dependent on or influenced by St. John's Gospel which, unlike the Synoptics, makes no mention whatsoever of the condemnation of Jesus by a *Jewish* court.<sup>17</sup> The indication of the time cannot be deduced from the relevant legal rules concerning the execution of a seducer of the people or false prophet, for if this were so, one of the three pilgrimage festivals, Pentecost, the feast of the Tabernacles, or the Passover itself, not the eve of this feast, would have had to be named.<sup>18</sup> Finally, since the agreement with John cannot be due to mere chance, we must take it that it had remained vividly in the memory of Jewish circles that the hated Nazarene, contrary to normal custom, had been executed on the eve of a feast, namely, the Passover. ★

Very recently the conjecture has been expressed that a statement in the Talmud attributed to the Rabbi Abbahu of Caesarea offers "the authentic Jewish exegesis of the words of Jesus at His trial, the official interpretation which had already formed the motive for the verdict."<sup>19</sup> It is p. *Taanith* 65b: "Thus speaks the Rabbi

<sup>16</sup> A. MEYER, *op. cit.*, p. 62, apparently holds this opinion.

<sup>17</sup> LAUTERBACH's interpretation of the *baraita* (pp. 492-494) also excludes the time having been taken from John's Gospel.

<sup>18</sup> Sources given by J. JEREMIAS, *Die Abendmahls Worte Jesu* (2nd ed., 1949), p. 44. JEREMIAS quotes texts to prove that the condemnation and execution of Jesus could have taken place on the feast of Passover. But examined closely, the texts show that only the execution, but not the hearing before the Sanhedrin, could have been carried through on a pilgrimage feast. Besides, it is questionable whether Jesus really was condemned by the Sanhedrin as a "false prophet."

<sup>19</sup> E. STAUFFER, "Der Stand der neutestamentlichen Forschung," *Theologie und Liturgie* edited by L. HENNIG (1952), pp. 50 f.

Abbahu: 'If someone says to you, 'I am God,' he lies; 'I am the Son of Man,' he will be sorry for it in the end; 'I will rise up to heaven,' he says it and cannot carry it out.'<sup>20</sup> According to Ethelbert Stauffer this polemic refers not to John 8:28 but to Mark 14:62. Thus, when Jesus replied, "I am," He did not express a simple assent, the more so since He was very reserved regarding the Messias predicate. On the contrary, here He was using "a most exalted form of divine self-revelation" in the sense of Ex. 3:14: "I am who am." Against this exegesis of the Talmud text, Werner Georg Kümmel has rightly objected that as a method it is quite inadmissible to identify the "I am God" of the Talmud text with the "I am who am" of Ex. 3:14, and so to find in the words of that rabbi an allusion to Mark 14:62. Though the text of Abbahu is probably a polemic against the Christian picture of Jesus, he says no connection whatsoever can be established with the admission of Jesus before the high priest.<sup>21</sup>

The fantastic stories of the last days of Jesus which are told in the Jewish folklore book *Toledoth Jeschu* are completely valueless.<sup>22</sup> The assertion that the book is extensively based upon the lost Gospel of the Hebrews<sup>23</sup> cannot be proved and is improbable. Even the assumption that the greater part of the book was completed before the year 500 A.D. is probably incorrect.<sup>24</sup> According to more recent Jewish research the work in its present Hebrew form, even in its very earliest version, did not come into existence before the tenth century.<sup>25</sup>

The Jewish historian Flavius Josephus (c. 37-97 A.D.) comes to speak of Jesus in the eighteenth book of his work, *Antiquities of the Jews*, written about the year 93. Regarding the death of Jesus he states: "Although Pilate, following on denunciation by the

<sup>20</sup> Translation based on A. MEYER, *op. cit.*, p. 61.

<sup>21</sup> W. G. KÜMMEL, *Verheissung und Erfüllung* (2nd ed., 1953), pp. 44 f., n. 102.

<sup>22</sup> Regarding this book, cf. KLAUSNER, *op. cit.*, pp. 59-62.

<sup>23</sup> SCHONFIELD, *op. cit.*, p. 219; for a contrary opinion, cf. Jocz, *op. cit.*, pp. 61 f.

<sup>24</sup> S. KRAUSS, *Das Leben Jesu nach jüdischen Quellen* (1902), pp. 246-248.

<sup>25</sup> KLAUSNER, *op. cit.*, p. 65. B. HELLER, "Über Judas Ischariotes in der jüdischen Legende," *Monatsschrift für Geschichte und Wissenschaft des Judentums*, 76 (1932), 33-42, places the origin of the *Toledoth* in the time of the Crusades.

leading men among us, punished him with the death of the cross, those who had loved him from the beginning did not cease from doing so" (*Antiquities* xviii. 3. 3. § 64). ★

The sentence contains two statements important for us: 1. That it was Pilate who condemned Jesus to be crucified; Josephus appears to regard this verdict as a formal death sentence, although his words do not exclude completely the possibility that he regarded it as a mere order for execution. 2. That the execution of Jesus followed denunciation by the Jewish authorities. Hence, the assertion, that the part of Pilate in the trial of Jesus was not worth mentioning, is not in accord with this testimony, any more than is the contrary assertion that the initiative had come solely from the procurator. On the other hand, the words of Josephus give no sure information regarding the matter and extent of the Jews' participation. The expression "on denunciation" could mean that the Jews had merely denounced Jesus, but it could equally well mean that they had appeared before the Roman court as plaintiffs. ★  
The question, whether the denunciation was preceded by a Jewish trial, remains open; but perhaps Josephus really had this case in mind, because according to the older lexicographers, the word "denunciation" is used where a crime has already been proved and it is a question of having the punishment applied which is prescribed for it by law.<sup>26</sup> As the Jews who were working for the destruction of Jesus are called "the leading men among us," it would appear to be rather as the proceeding of official authorities than that of a group of private persons. If no doubt existed as to whether the Sanhedrin at that time possessed power to inflict capital punishment, one would scarcely hesitate to take it from the text of Josephus that a Jewish trial had preceded the denunciation. S

The authenticity of the *Testimonium Flavianum* is much disputed, as is well known. The assertion of Schürer and others that the whole passage is un genuine,<sup>27</sup> is fairly generally rejected to-

<sup>26</sup> K. L. SCHMIDT, *Judaica*, I (1945), 6.

<sup>27</sup> SCHÜRER, I, 544-549; E. MEYER, I, 206-211; A. SCHWEITZER, *Geschichte der Leben-Jesu-Forschung* (5th ed., 1933), p. 451.

day, however. The passage in *Antiquities* xx. 9. 1. § 200 which is definitely genuine, presupposes an earlier mention of Christ. Among others, Leopold von Ranke, Adolph von Harnack, F. Crawford Burkitt and, most recently, Franz Dornseiff, have upheld the essential authenticity of the testimony.<sup>28</sup> The majority of scholars believe that some parts of the passage are interpolations.<sup>29</sup> The passage quoted above, however, as its style proves, is no interpolation by a strange hand, and this is generally admitted.<sup>30</sup>

In the Old Slavonic translation of *The Jewish War* of Josephus there is a very curious account of the life and death of Jesus. The Jewish scholar Robert Eisler conceived the daring idea of making this report, which he adapted to his purpose by deletions and alterations, the basis of an account of the history of Jesus.<sup>31</sup> Schol-

<sup>28</sup> L. VON RANKE, *Weltgeschichte*, III, 2 (1883), 40 f.; A. VON HARNACK, "Der jüdische Geschichtsschreiber Josephus und Jesus Christus," *Internationale Monatschrift für Wissenschaft Kunst und Technik*, 7 (1913), 1037-1068; F. C. BURKITT, "Josephus and Christ," *Theologisch Tijdschrift*, 47 (1913), 135-144; F. DORNSEIFF, "Lukas der Schriftsteller," with an Appendix, "Josephus und Tacitus," ZNW, 35 (1936), 129-155.

<sup>29</sup> For the state of the discussion, cf. H. WINDISCH, "Das Problem der Geschichtlichkeit Jesu," ThRs (NF), 1 (1929), 266-288; 2 (1930), 207-252; KLAUSNER, *op. cit.*, 67-75; W. BIENERT, *Der älteste nichtchristliche Jesusbericht* (1936), pp. 7-46; G. C. RICHARDS, "The Testimonium of Josephus," JThSt, 42 (1941), 70; Ch. MARTIN, "Le Testimonium Flavianum. Vers une solution définitive?" RBPh, 20 (1941), 409-465; H. VAN DER LOOS, *Jezus Messias-Koning* (1942), pp. 207-210.

<sup>30</sup> K. LINCK, *De antiquissimis veterum quæ ad Iesum Nazarenum spectant testimoniis* (1913), pp. 26-28, admits that some of the linguistic arguments brought forward by B. NIESE against its genuineness are weak, but he considers the expression "the principal men among us" unlike Josephus. P. CORSEN, "Die Zeugnisse des Tacitus und des Pseudo-Josephus über Christus," ZNW, 15 (1914), 133 f., has shown, however, that the use of the expression is perfectly reliable. Cf. also K. G. GOETZ, "Die ursprüngliche Fassung der Stelle Josephus *Antiquit.* xviii. 3. 3. und ihr Verhältnis zu Tacitus *Annal.* xv. 44.," ZNW, 14 (1913), 286-297, esp. 290 f.; B. BRÜNE, "Zeugnis des Josephus über Christus," ThStKr, 92 (1919), 144 f.; L. WOHLEB, "Das Testimonium Flavianum," RQ, 35 (1927), 151-169; E. STAUFFER, "Geschichte Jesu," *Historia mundi*, IV (1956), 129.

<sup>31</sup> In his two-volume work, *Iesous basileus ou basileusas* (1929/30). Cf. F. SCHEIDWEILER, "Sind die Interpolationen im altrussischen Josephus wertlos?" ZNW, 43 (1950/51), 155-178, who sees in isolated assertions of the interpolator the refutation of a certain writing of the time of Josephus, in which Jewish history was treated from a different point of view than that of Josephus. These do not refer to texts relevant to our problem.

ars of all schools of thought are unanimous today in their condemnation of this undertaking. It is not quite clear, however, that the Old Slavonic Josephus is entirely valueless. Walther Bienert, who considers the Old Slavonic work to be, like the Greek *Testimonium Flavianum*, a revision of an original Josephus text from *The Antiquities of the Jews*, has made the remarkable experiment of extracting the original Josephus text from these two revisions. This reconstructed text confirms the Christian tradition in the following five particulars:<sup>32</sup> 1. Jesus lived in the time of Pontius Pilate and was crucified by him. 2. He had done "paradoxical" deeds. 3. He had exercised the function of teacher and found many disciples among the Jews. 4. He had frequently sojourned at the Mount of Olives, and had also done so shortly before His death. 5. He was condemned to be crucified by Pontius Pilate. But besides these particulars, that allegedly original text also contains the following four statements which do not harmonize with the account in the gospels:<sup>33</sup> 1. Jesus was a magician. 2. He planned a revolt, to set out from the Mount of Olives, with the aim of taking possession of Jerusalem. 3. He taught people who were eager for reform. 4. After His death His disciples continued the agitation. Now, Bienert himself has demonstrated that the assertions of the second group, genuinely traceable to Josephus, can only have originated among the anti-Christian Pharisees, and are therefore historically worthless. Actually, the Jewish tendency to accuse Jesus of witchcraft (Mark 3:22) and of stirring up the masses (Luke 23:2), and the apostles of fomenting unrest (Acts 4:2; 5:26-28; 5:34-40; 17:6 ff.; 24:5; 25:8),<sup>34</sup> can be found in the New Testament. Even if one credits the Old Slavonic Josephus with a certain limited value, as Bienert does,

<sup>32</sup> W. BIENERT, *Der älteste nichtchristliche Jesusbericht* (1936), pp. 258-263.

<sup>33</sup> *Ibid.*, pp. 263-288.

<sup>34</sup> Cf. E. E. JENSEN, "The First-Century Controversy over Jesus as a Revolutionary Figure," *JBL*, 60 (1941), 261-272; G. G. FOX, "Early Jewish Attitudes toward Jesus, Christians and Christianity," *JBR*, 13 (1945), 83-93; W. NESTLE, "Zur altchristlichen Apologetik im NT," *Zeitschrift für Religion und Geistesgeschichte*, 4 (1952), 115-123, esp. 120 f.

one comes to the conclusion that this text throws no new light on the story of the death of Jesus.

Rome's greatest historian, Tacitus, in his *Annales*, written about 115 A.D., mentions the Christians in his description of the burning of Rome in the time of Nero: "Christ, the originator of this name, was executed by the Procurator Pontius Pilate in the reign of Tiberius" (*Auctor nominis eius, Christus, Tiberio imperitante per procuratorem Pontium Pilatum supplicio affectus erat—Annales xv. 44. 3*).

Apart from explicitly placing the event in the reign of Tiberius Cæsar, the testimony of Tacitus offers nothing new beyond that of Josephus. Even if he had known about it, the Roman historian would not have had the slightest reason to mention participation of the Jews in the matter. Although he does not particularize the juridical character of Pilate's verdict, his words may doubtless be taken to imply that Pilate sentenced Jesus to death. It would be interesting to know whence Tacitus got his information. That he owed it to Christians with whom he had come into official contact when governor of the Asian Province,<sup>35</sup> would not be impossible, it is true; but neither would it be very probable. When he relates things which he knows only from hearsay, it is his practice to indicate this.<sup>36</sup> He seems to know very little indeed, for obviously he takes the name Christ to be the proper name of

<sup>35</sup> Thus, among others, E. MEYER, III, 505 f., and, more recently, H. FUCHS, "Tacitus über die Christen," VC, 4 (1950), 65-93, esp. 72.

<sup>36</sup> Cf. F. LOOFS, *Wer war Jesus Christus?* (1916), p. 22: "Dass Tacitus, dieser sorgfältige Historiker, in seiner Mitteilung über Christus nur wiedergegeben hat, was ein letztlich auf die Christen zurückgehendes Gerücht ihm zugetragen hatte, ohne dass er diese Quelle seines Wissens angegeben hätte, ist nicht wahrscheinlich." M. GOGUEL, *Jésus* (2nd ed., 1950), p. 73: The statements of Tacitus concerning Christ "doivent provenir d'une source documentaire, puisqu'il n'y a pas un mot comme *dicunt* ou *ferunt* qui autoriserait à penser que Tacite rapporte des on dit." Likewise the characteristic remark that the Christian movement was extinguished by the execution of its founder, but then revived again shortly before 64 A.D., definitely could not originate from Christian sources. But neither could this information have come from Jewish sources, "puisque'elle suppose une étroite solidarité du judaïsme et du christianisme par ce qui est dit de la détestable superstition qui renaît simultanément en Judée et à Rome, peu avant 64, qui ne distingue pas entre les deux formes de messianisme que constituaient le christianisme et le judaïsme."

Jesus. Precisely for this reason one cannot take it that he obtained his information from records of the senate,<sup>37</sup> quite apart from the fact that it is doubtful whether any Roman records concerning Jesus ever existed. It has been surmised by some that Tacitus drew on a work of Pliny the Elder,<sup>38</sup> but the fact that Tacitus, in his descriptions of Jewish conditions, departs sharply from corresponding information in Pliny makes this supposition an improbable one. Others are of the opinion that the Roman historian obtained information concerning the origins of Christianity from Pliny the Younger, who had contact with Christians as governor of Bithynia.<sup>39</sup> But why should he have preferred such information to what he could have learned for himself during his proconsulate by questioning Christians in Asia Minor? More frequently we find the opinion expressed that Tacitus owed his knowledge solely to the passages concerning Jesus in Josephus.<sup>40</sup> That Tacitus used *The Jewish War* of Josephus is certain; he could not ignore this fundamentally important work concerning the Jewish-Roman war. But one cannot conclude from this that he necessarily also saw the other work of the Jewish writer. Some observations of his make it appear fairly improbable that Tacitus drew his information about Christ from Josephus.<sup>41</sup> Finally, one

<sup>37</sup> Thus G. ANDRESEN, *WkP*, 27 (1910), 388; for a contrary opinion, see CORSEN, *op. cit.*, p. 126.

<sup>38</sup> A. GERCKE, "Senecastudien," *Jahrbücher für das klassische Philologie*, Suppl. 22 (1899), 216 ff.; E. Th. KLETTE, *Die Christenkatastrophe unter Nero* (1907), p. 148; P. BATIFFOL, *Orpheus et l'Évangile* (1910), pp. 46-48. For a contrary opinion, cf. LINCK, *op. cit.*, p. 83.

<sup>39</sup> GOETZ, *op. cit.*, pp. 295-297. A contrary opinion is expressed, among others, by GOGUEL, *op. cit.*, p. 74: "S'ils sont d'accord pour n'y voir qu'une superstition. Plinè juge cette superstition innocente, tandis que Tacite semble avoir pris à son compte les accusations lancées contre les Chrétiens et qualifie leur superstition de détestable."

<sup>40</sup> H. LEHMANN, *Claudius und Nero*, I (1858), 33 ff.; HARNACK, *op. cit.*, p. 1059; CORSEN, *op. cit.*, p. 134; DORNSEIFF, *op. cit.*, p. 148; OLMSTEAD, *op. cit.*, p. 244, n. 54; for a contrary opinion, cf. FUCHS, *op. cit.*, p. 72, n. 11, who speaks of an "unfortunate idea" (*unglücklichen Einfall*) of HARNACK's which had found a "sure refutation" by E. NORDEN (see *below*, note 42).

<sup>41</sup> GOGUEL, *op. cit.*, p. 74, reminds us that Tacitus had nothing but contempt for Judaism, and therefore can hardly have obtained his information regarding the burning of Rome from Josephus; moreover, he points out the following discrep-

Antonius Julianus, who was proconsul of Judea in the time of Vespasian's war and according to an ancient tradition, wrote a Jewish history,<sup>42</sup> has been credited with being the informant of Tacitus; but as his writings have not survived, this view, too, remains pure speculation. All one can say is that this particular passage in Tacitus is based on a non-Christian, and probably a pagan, document.<sup>43</sup>

Finally, among the oldest reports on the death of Jesus, besides the evidence of the historians Josephus and Tacitus, there is an ancient private letter. Through a lucky turn of fate, the letter of paternal admonition, which the Syrian, Mara bar Sarapion, an otherwise unknown Stoic, addressed to his son who was studying in Edessa, has been preserved to us.<sup>44</sup> Of course this testimony is only of importance to us if it comes from a non-Christian circle and dates from the second century at the latest. Both conditions are probably present. The thesis of the Christian origin of the letter put forward by Fr. Schulthess,<sup>45</sup> is generally dismissed nowadays. Schulthess relied solely on a passage at the beginning of the letter,<sup>46</sup> which has been handed down in a damaged state and which he proposed emending in a manner allowing of a Christian

ancies: According to Josephus, the death of Jesus did not have the effect of killing the faith of His disciples; according to Tacitus, on the other hand, Christianity was of no significance for some time after the death of its Founder; Josephus' verdict on Christianity is on the whole favorable, that of Tacitus shows animosity; Tacitus appears to take the name of Christ to be the proper name, while Josephus differentiates between the proper name, Jesus, and the added name, Christ.

<sup>42</sup> J. BERNAYS, *Über die Chronik des Sulpicius Severus* (1861), p. 56; E. NORDEN, *Neue Jahrbücher für das klassische Altertum*, 31 (1913), 664-666; LINCK, *op. cit.*, pp. 85 f.; with reservations, so also SCHÜRER, I, 58. Regarding Antonius Julianus, cf. *Jewish War* vi. 4. 3. § 238; Minucius Felix *Octavius* 33. 4. EISLER, I, 203, is of the opinion that Tacitus obtained his knowledge from reports of the trials of Christians, or from discussions of these among those around him. H. VAN DER LOOS, *op. cit.*, pp. 220 f., leaves the question open.

<sup>43</sup> Cf. GOGUEL, *op. cit.*, p. 74: "Tacite a connu un document qui n'était ni juif ni chrétien, mais païen et qui rattachait le christianisme au Christ crucifié par Ponce-Pilate. Il est inutile de souligner l'importance de cette constatation."

<sup>44</sup> Text given by AUFHAUSER, *op. cit.*, pp. 5-11.

<sup>45</sup> ZDMG, 51 (1897), 365-391, esp. 381.

<sup>46</sup> Cf. AUFHAUSER, p. 5, lines 10 f.

interpretation. The expression "change of mind"<sup>47</sup> is not specifically Christian, and neither does Schulthess take it as capable of being so proved. The writer of the letter betrays the fact that he is a non-Christian not only by his numerous definitely Stoic thoughts and expressions but also by the fact that he speaks quite freely of "our gods"<sup>48</sup> and bases his statement that "the wise king is not dead" on the continuance of the laws founded by that king and not on the resurrection and ascension of Jesus, as one would expect a Christian to do. The fact that the name of Jesus is not mentioned in the two parts, although the names of Socrates and Pythagoras are, makes it seem very probable that the writer was not familiar with the name of Jesus or Christ. About the date, scholars differ. William Cureton,<sup>49</sup> who first published the letter, thought it possibly dated from 95 A.D., but preferred to place it in the second half of the second century. J. Moreau<sup>50</sup> remains undecided between the second and third centuries; Aufhauser<sup>51</sup> leaves the time between 73 and 160 A.D. an open question. But the letter itself contains a few clues in view of which it cannot have been written long after 73 A.D. There is mention, namely, of the flight to Seleucia of the citizens of the town of Samosata,<sup>52</sup> and the hope is expressed that the Romans may permit the banished people to return to their homeland.<sup>53</sup> The writer himself is one of these persons robbed of his homeland.<sup>54</sup> The only event known to us which might well be associated with such banishment is the deposition of King Antiochus IV of Commagene in the year 73 A.D. (Josephus *The Jewish War* vii. 7. 1-3. § 219-243). At that time the king, who lived in Samosata, had to flee before the troops of Cæsennius Pætus, governor of Syria, and doubtless the anti-

<sup>47</sup> Cf. *ibid.*, p. 9, line 40.

<sup>48</sup> *Ibid.*, p. 6, line 36.

<sup>49</sup> *Spicilegium Syriacum* (1855), pp. 43-48.

<sup>50</sup> *Les plus anciens témoignages profanes sur Jésus* (1944), pp. 9-11.

<sup>51</sup> *Op. cit.*, p. 2. According to K. L. SCHMIDT, *op. cit.*, p. 12, Mara is "approximately a contemporary of Tacitus."

<sup>52</sup> Cf. AUFHAUSER, p. 6, lines 30 ff.

<sup>53</sup> *Ibid.*, p. 11, lines 1-8.

<sup>54</sup> *Ibid.*, p. 7, lines 1-15; pp. 10, line 36-11, line 11.

Roman section of the citizens went with him. O. Zöckler and Robert Eisler, among others, have pronounced in favor of dating the letter shortly after 73 A.D.<sup>55</sup>

In this letter the following sentences are of importance for us:

"What good did it do the Athenians to kill Socrates, for which deed they were punished with famine and pestilence? Or what did it avail the citizens of Samos to burn Pythagoras, since their country was covered over with sand in one moment? *Or what did it avail the Jews to execute their wise king, since their kingdom was taken from them from that time?* For God justly avenged those three wise men. The Athenians died of famine, the Samians were flooded by the sea, *the Jews were slaughtered and driven from their kingdom, and live dispersed everywhere.* Socrates is not dead, thanks to Plato. Nor is Pythagoras dead: because of the statue of Hera. *Nor is the wise king dead: because of the new laws which he has given.*"<sup>56</sup>

Without doubt when he says the wise king of the Jews, Mara means Jesus of Nazareth. For He was condemned and publicly pilloried as "King of the Jews," but because of His moral message the pagan world must have known Him primarily as the wise man and the herald of the new laws. The catastrophe of 70 A.D. is doubtless the divine judgment referred to, which overtook the Jews after, and because of, the execution of that King. Jules Isaac has recently contested this, and asked whether anyone could seriously maintain that the Jews had been driven from their country in the year 70. Surely those who took part in the Second Jewish War (132-135 A.D.) were not ghosts; the institution of the patriarchate, which was officially recognized by Rome in the second half of the second century, was sufficient proof in itself, he maintained, that Palestinian Jewry, weakened though it was, continued to exist.<sup>57</sup> But Isaac reads into Mara's words a meaning which these certainly do not have. If one understands "the Jews"

<sup>55</sup> O. ZÖCKLER, PRE (3rd ed.), IX (1901), 3; EISLER, II, 546 f.

<sup>56</sup> AUFHAUSER, p. 9, lines 1-18.

<sup>57</sup> J. ISAAC, "Encore un 'Procès de Jésus.'" *Le Monde Juif*, 6 (1951), 24.

as meaning the whole of Jewry of that time, then the passage in the letter naturally could not refer either to the Jewish War or to any other historical event whatsoever. The context shows clearly, however, that the expression means only a part—though doubtless a very considerable part—of Jewry; otherwise there could be no talk of extermination and deportation. Besides, the parallel statements, “the Athenians died of famine, the Samians were flooded by the sea,” make this meaning of the words quite certain. That very many Jews were killed and large portions of the population deported during the Jewish War is a fact. In one text Josephus mentions 97,000 prisoners and 1,100,000 dead.<sup>58</sup> On the basis of single losses in separate phases of the war, as handed down in the writings of Josephus and elsewhere, modern authors have reckoned still higher figures.<sup>59</sup> To escape being killed or deported as slaves part of the population also left the country voluntarily. The remnant of the Zealots, for instance, fled to Alexandria and Cyrenaica,<sup>60</sup> and according to a well-attested Jewish tradition, about a thousand Jews went even as far afield as India, where they settled on the coast of Malabar.<sup>61</sup> Mara’s words could also be made to fit the aftermath of the war against Hadrian, as, then also the Jewish people had paid a vast toll in blood, and, besides this, were forbidden to enter Jerusalem or the country. But a catastrophe which only occurred a hundred years after the execution of Jesus cannot very well have been interpreted as a divine judgment for the execution, and besides, by his words, “from that time,” Mara brings the catastrophe into close connection in the matter of time with the execution of the King of the

<sup>58</sup> *Jewish War* vi. 9. 3. § 420.

<sup>59</sup> H. MILMAN, *History of the Jews*, II (1909), 100 f.: 101,700 prisoners, 1,356,460 dead.

<sup>60</sup> *Jewish War* vii. 10. 1. § 410; vii. 11. 1. § 437.

<sup>61</sup> Cf. M. N. ADLER, *The Itinerary of Benjamin of Tudela* (1907), p. 64. The fact that the expulsion of the Jews from their country in the year 70 A.D. was also known elsewhere in the ancient world is clear from *Sibylline Oracle* i, 393–395: “But when the Temple of Solomon in the Holy Land falls, thrown down by armored men of barbarous speech, the Hebrews will be driven from their country . . .”

Jews. The remark that "their kingdom was taken from the Jews" naturally refers to the abolition of the Sanhedrin rule and with it the last remnant of national independence in the year 70.<sup>62</sup> Since then the Jews pray in Beracha 11 of the Eighteen Prayers for the restoration of their sovereignty and of their own judiciary.

Hence, the Syrian stoic is acquainted with the title of Messiah which played a part in the condemnation of Jesus and is convinced that the Jews were responsible for the execution of Jesus. In order to assess this testimony correctly it would naturally be important to know how this man had come by his knowledge of the events leading up to the death of Jesus. Despite his love of philosophy, it is inadmissible to form an exaggerated idea of his degree of education; but, on the other hand, there is no reason to suppose that he merely repeats in their entirety unsubstantiated reports or relies entirely on Christian information. Since, on the contrary, no trace of Christian influence can be detected in him, his allusion represents a valuable proof that, at that time, even non-Christian circles in Syria credited the Jews with the decisive part in the execution of Jesus. This in itself suffices to disprove the assertion of modern authors that the gospel accounts of the Sanhedrin's proceedings against Jesus are a Christian invention.

Scanty though the non-Christian sources concerning our theme are, they nevertheless substantiate three important facts: 1. That Jesus was crucified on the strength of a sentence pronounced by Pontius Pilate, the Roman governor (Josephus, Tacitus). 2. That Pilate's action against Jesus took place at the instigation of the Jewish authorities (Josephus). 3. That the part of the Jews in the

<sup>62</sup> Cf. also O. HOLTZMANN, "Das Ende des jüdisch Staatswesens und die Entstehung des Christentums," *Geschichte des Volkes Israel* edited by B. STADE, II (1888), 673. Of the catastrophe of the year 70, he says: "Die nationale Selbstständigkeit des Volkes war für immer vernichtet. Ein neues Zeitalter musste für den jüdischen Glauben beginnen." S. G. F. BRANDON, *The Fall of Jerusalem and the Christian Church*, (1951), p. 166: "The Jews did, then, indeed receive a blow from which, as a nation, they never recovered. Although later, in the time of Hadrian, they rose once more in armed revolt against Rome, their national existence had really terminated in A.D. 70." Cf. also A. BÜCHLER, *Economic Conditions of Judaea after the Destruction of the Second Temple* (1912), pp. 29-55.

trial of Jesus cannot have been confined to mere denunciation to the procurator; they must, on the contrary, have participated decisively in the events which led to the execution of Jesus (Mara). Theories 1 and 5, discussed earlier, have therefore proved untenable, while theories 2 and 4 have been shown to be improbable.

Before proceeding to evaluate the main sources, namely, the gospels, it is necessary to be quite clear concerning their character. Of these four books, the first three, the so-called "Synoptic" Gospels, are closely connected. The oldest of them is the Gospel of St. Mark, which served both the author of the present Greek Gospel of St. Matthew and the Evangelist Luke as basis. The Gospel of St. John, which originated toward the end of the first century, presupposes the existence of the three older documents, but seldom corresponds to them. In the account of the trial of Jesus, Matthew on the whole adheres closely to Mark, while Luke interweaves Mark's account with stories from other sources; whereas John's account goes its own way to a great extent, even if less so here than elsewhere.

None of these four accounts is an actual report of a trial; none of them is based on such. Attempts to extract from Mark and the separate source in Luke anything in the nature of an official account of a trial must be regarded as failures.<sup>63</sup> The evangelists are, generally speaking, less interested in the purely historical course of events than in their content as religious doctrine; hence their accounts of the passion must also be understood primarily as testimonies of faith, and not so much as biographical documents.<sup>64</sup> We must not, a priori, look to them for a strict chronologically and topographically ordered narrative, satisfying to the historian, which takes into account all the essential circumstances, events and interconnections. Nevertheless, the historical interest is more prominent in the story of the passion than in the other

<sup>63</sup> G. LIPPERT, *Pilatus als Richter* (1923), pp. 10-13.

<sup>64</sup> See in particular M. DIBELIUS, "La signification religieuse des récits évangéliques de la passion," *RHPR*, 13 (1930), 30-45; J. SCHMID, "Die Darstellung der Passion Jesu in den Evangelien," *Geist und Leben*, 27 (1954), 6-15.

parts of the gospels. This is outwardly apparent in the unusual number of separate particulars concerning time and place. In contrast to the other parts of the gospels, the story of the passion is not a series of separate stories but a continuous narrative. From this fact, scholars rightly conclude that here we have to do with the earliest established piece of evangelical tradition.<sup>65</sup> From the very beginning, the first Christian missionary had to be equipped with as full an answer as possible to the question of how it could have come to pass that the Messiah and Son of God, the Holy and Just One, should have died the death of a criminal on the cross. For though this question had a highly important theological side, it was also asked because of the questioner's interest in what had actually happened under Pontius Pilate. Hence it could only be regarded as satisfactorily answered if the outward historical sequence of events was first adequately described. How the demand for the theological interpretation was met we learn primarily from the epistles of St. Paul, in which, be it noted, the actual history of the passion is almost entirely left out of account.

\* Modern criticism has pointed out that the passion narratives of our gospels are less dominated by apologetic motives. One must not, however, exaggerate the apologetic streak in them, as is often done. "For the earliest Christian community, which composed His martyrology shortly after the death of Jesus, the historical facts were sufficient apologetic in themselves."<sup>66</sup> It is true that the gospel accounts of the passion are strongly influenced by the tendency to prove fulfilment of the prophecies. Tradition obviously exploits with eagerness every opportunity of pointing out

<sup>65</sup> Cf. SCHMID, *op. cit.*, pp. 7-9. That Paul was acquainted with a written story of the passion is possible, but cannot be proved. W. BUSSMANN, *Synoptische Studien*, III (1931), 190, relies on 1 Cor. 15:3, Christ died for our sins "according to the Scriptures," for confirmation of his thesis; V. TAYLOR, *The Formation of the Gospel Tradition* (1933), p. 48, agrees with him. But in Paul "the Scriptures" are the books of the Old Testament. Doubtless here he is thinking particularly of Isai. 53, though he never cites this chapter explicitly. Cf. J. WEISS, *Der erste Korintherbrief* (10th ed., 1925), p. 348, and G. WIENCKE, *Paulus über Jesu Tod* (1939), p. 80.

<sup>66</sup> K. L. SCHMIDT, *Der Rahmen der Geschichte Jesu* (1919), p. 306; *idem*, in *Judaica*, I (1945), 15.

that the Old Testament prophecies have been fulfilled in the passion of Jesus, the purpose being to prove that the scandal of the cross was in accordance with the will of God. Hence it liked to take into the story of the passion those features to which allusions could be drawn or of which types or symbols could be named from the Old Testament. Also, here and there, it brought the description into line with the wording of the prophecies. But the material of this kind applicable to the actual trial is very scanty—the proceedings before the Sanhedrin and the Roman governor have no Old Testament prototype—and only concerns minor incidents or circumstances, for instance the mocking of Jesus by the Jews, or His silence.<sup>67</sup> Only the account of the crucifixion itself is more rich in allusions or references to the Old Testament.<sup>68</sup> But it cannot be said of this part either that the quest for verification of the prophecies has proved a formative factor in the story; for the proceedings in question have either been proved by accounts of nonbiblical origin to be necessary or at least usually belonging to a crucifixion, such as the right of the executioners to the clothing of the executed, or else they bear in themselves the stamp of credibility, such as the words of Mark 15:34, at which even the faithful took scandal.<sup>69</sup> If the primitive Church understood Christ's death on the cross as an event in the history of salvation and consequently told of it as prophecy fulfilled, this implied no temptation to ignore the historical facts or not to take them seriously enough. On the contrary, the *verification* of proph-

<sup>67</sup> The mocking: Mark 14:65; prototype: Isai. 50. The silence of Jesus: Mark 14:61; 15:5; Luke 23:9; John 19:9; prototype: Isai. 53:7. See the telling remarks on this subject by J. WEISS, *Das älteste Evangelium* (1903), p. 326.

<sup>68</sup> Mark 15:23, 24, 29 f., 34, 36; Luke 23:26, 49; John 19:28, 36 f. On this subject, cf. K. H. SCHEKLE, *Die Passion Jesu in der Verkündigung des NT* (1949), pp. 86-91.

<sup>69</sup> Cf. E. SCHICK, *Formgeschichte und Synoptikerexegese* (1940), pp. 226-238. The Tübingen exegete and dogmatic theologian, Johann Ev. KUHN, showed in his still valuable answer to the myth theory of his countryman and contemporary, David Friedrich STRAUSS, how little the O.T. prophecies can be said to have been of "myth-forming" influence in the apologetic kerygma. Cf. J. R. GEISELMANN, "Der Glaube an Jesus Christus—Mythus oder Geschichte? Zur Auseinandersetzung Joh. Ev. Kuhns mit David Friedrich Strauss," *TQ*, 129 (1949), 252-277; 418-439.

ecy aimed at would naturally have collapsed *at once* if the tradition of the passion, which was passed on under the constant supervision of the public, both believing and unbelieving, had absorbed any elements obviously or even presumably unhistorical. The allusion to a text in the Old Testament only became of value for the Christian community and a propaganda force aimed at those outside it, if it could be convincingly demonstrated that it had found its fulfillment in a historical event. That the passion narrative is not a product of prophecies believed fulfilled, and hence a tale more or less divorced from history can be concluded, moreover, on the basis of three considerations. In the first place, those passages in the Old Testament which are to be regarded as the main source of scriptural witness of the death of Jesus, namely, Psalms 22 and 69, and the so-called "Songs of the Servant of God" in Isaias (42; 49 f.; 52 f.),<sup>70</sup> contain a number of features which are not exploited either directly or indirectly in the story of the passion. Secondly, there are, on the other hand, numerous features of the gospel story of the passion which have no counterpart in Old Testament texts. And thirdly, many incidents reported in the story of the passion correspond only very imperfectly with the words of prophecy cited or indicated, a circumstance which would be inexplicable if historical fact had played no role or only a subordinate one in the composition of those narratives. There is another apologetic bias in the gospels which cannot be denied. They betray the effort to underline heavily the guilt of the Jews in the death of Jesus, with the result that the guilt of the Romans does not always emerge with sufficient sharpness. This tendency has to be kept in view by anyone who undertakes to reconstruct the course of events. The evangelists achieve this shifting of the accent, however, only by leaving out here and there things which would more or less exonerate the Jews. On the other hand, it cannot be proved that they inserted anti-Jewish stories invented for the purpose. The inclination, frequently to be observed, to

<sup>70</sup> Cf. Chr. MAURER, "Knecht Gottes und Sohn Gottes im Passionsbericht des Markus-Evangelium," ZTK, 50 (1953), 1-38, esp. 7-17.

condemn as unhistorical or at least suspicious everything in the passion story which throws an unfavorable light on the Jews, has to be met with the question: "Whence, then, came the boundless anti-Semitism attributed to primitive Christianity if the Jews had little or nothing to do with the death of Jesus?" The first believers and the original transmitters of the gospel narratives were all of Jewish origin themselves. The story of the passion, which was largely missionary in its purpose and aimed in fact particularly at the conversion of the Jews, would have failed in its missionary effect had it contained anti-Jewish particulars which would inevitably have been shown up sooner or later as inventions. There are positive clues which go to show that at the time that these accounts were being produced the Church was not anti-Jewish to any extent and in a way which would have made her seize upon the fabrication of anti-Jewish legends. It is worthy of note that the passion story in St. John's gospel, the last written of the four canonical gospels, reports not one single detail of the condemnation of Jesus by the Sanhedrin, an event which incriminated the Jews particularly strongly.<sup>71</sup> Moreover, there is food for thought in the fact that the story of the passion is nowhere exploited for anti-Jewish polemics in the writings of the Apostolic Fathers.<sup>72</sup> Admittedly, later times were less restrained, as can be seen from the history of the texts of the gospels, from certain apocrypha, and from the utterances of many church writers from about the middle of the second century onward.<sup>73</sup> But what was possible in the second and third centuries among Christians converted

<sup>71</sup> W. W. SIKES, "The Antisemitism of the Fourth Gospel," JR, 21 (1941), 23-30, shows that the accusation of anti-Semitism against St. John's Gospel is open to question.

<sup>72</sup> At most, the *Epistle of Barnabas* 7. 9., could be put forward, but even there the accent is not precisely on proving the Jews guilty of the death of Jesus (the Jews are not mentioned explicitly at all), but on proving that the passion of Jesus already had its prototype in old Jewish ceremonial (Lev. 16: 21 f.; cf. 7:8).

<sup>73</sup> The main ones to be mentioned in this context are the Gospel of Peter and the writings of Justin Martyr. See W. BAUER, *Das Leben Jesu im Zeitalter der neutestamentlichen Apokryphen* (1909), pp. 193-209. Cf. also R. WILDE, *The Treatment of the Jews in the Greek Christian Writers of the First Three Centuries* (1949).

from paganism was not possible in the Palestinian Church of the first century. And it is definitely not fair play to draw a posteriori conclusions about the attitude of the primitive Church toward Jews from the unscrupulous and at times unbridled enmity toward the Jews which prevailed later.<sup>74</sup> The question of credibility and historicity is not decided, as Paul Wernle once remarked aptly, when we have established the existence of apologetic considerations in an evangelist. This is especially so in the case of Mark. "To invent history and to narrate history for a purpose are two different things."<sup>75</sup> How little the historical aspect was overshadowed by apologetic interests is proved by the account of Peter's denial, an incident inextricably associated with the story of the trial, and one which seriously compromises the most important man in the first Christian community; and also by the account of the shameful flight of the disciples.

The gospel accounts of the passion are also remarkably lacking in edifying passages calculated to touch the heart and mind of the reader. They refrain from seeking to awaken sympathy by descriptions of the spiritual and physical tortures of the Accused. St. Mark's account particularly is brief, temperate and written in a crystal-clear style, though indeed for that very reason it is incomparably gripping and effective. This lack of any apologetic tendency has elicited the comment that the only bias to be found in the gospels is the constant emphasis on the guilt of the Jews, and that for this reason they cannot be historical accounts founded on fact,<sup>76</sup> but the unbiased scholar will not be influenced by this argument. On the contrary, the characteristic just mentioned is

<sup>74</sup> According to M. GOGUEL, *Jésus* (2nd ed., 1950), p. 441, one can see from Justin Martyr and from the Gospel of Peter the spirit in which the gospel narratives of the passion were read in the primitive Church, a spirit which seemed to match exactly the spirit in which they were written.

<sup>75</sup> P. WERNLE, "Altchristliche Apologetik im NT," ZNW, 1 (1900), 42-65, esp. 43, n. 1. P. GAECHTER, ZkTh, 78 (1956), 228, confesses to the view that "der Leidensbericht in seiner Urform das unmittelbar Erlebte widerspiegelte; die theologische Deutung und die alttestamentlichen Lichter sind ihm, wenn auch sehr bald, so doch sekundär aufgesetzt worden."

<sup>76</sup> W. A. CAMPBELL, *Did the Jews Kill Jesus?* (1927), pp. 36 f.

much more likely to lead scholars to the conclusion that the account was written at a time when the writer was still under the direct impression of the events described. Usually it is only someone telling of events long past who thinks he cannot do without secondary details which play on the emotions. The additional material in Matthew is unimportant in quantity, and without pronounced theological tendency.<sup>77</sup> The same applies to the more extensive additional details in Luke, which the majority of scholars attribute to a special written source, or several.<sup>78</sup> St. John's narrative of the passion has a position quite apart. The Fourth Evangelist concentrates all his attention to a far greater degree than do his predecessors on the person of Jesus, and consequently passes over a number of secondary episodes, as for instance, the Simon of Cyrene incident. Moreover, he is intent upon bringing out the sublime features in the personality of Jesus. For instance, he deems it important to bear witness that Jesus voluntarily permitted Himself to be arrested, and that His demeanor and utterances before His Jewish and Roman judges had a truly kingly

<sup>77</sup> Regarding Matt. 27:19, 24 f., see *below*, pp. 215 ff.

<sup>78</sup> For example, P. FEINE, *Eine vorkanonische Überlieferung des Lukās* (1891), pp. 61-75; B. WEISS, *Die Quellen des Lukasevangeliums* (1907), *passim*; P. WERNLE, *Die Synoptische Frage* (1899), p. 92 f.; A. M. PERRY, *The Sources of Luke's Passion Narrative* (1920), pp. 56-69; *idem*, ExpT, 46 (1934/5), 256-260; B. H. STREETER, *The Four Gospels* (1924), p. 202; B. S. EASTON, *The Gospel According to St. Luke* (1926), pp. 338 f.; V. TAYLOR, *Behind the Third Gospel* (1926), pp. 33-75; *idem*, *The Formation of the Gospel Tradition* (1933), pp. 51 f., 55; *idem*, ExpT, 46, (1934/5), 236-238; FR. C. GRANT, *The Growth of the Gospels* (1933), p. 12. The proto-Luke hypothesis of STREETER and TAYLOR is certainly highly debatable, but the assumption that Luke had a special source or several special sources, does not by any means stand or fall with this hypothesis. J. M. CREED, ExpT, 46 (1934/5), 101-107, traces Luke's account of the trial before Pilate completely back to Mark; in the opinion of J. FINEGAN, *Überlieferung der Leidens- und Auferstehungsgeschichte Jesu* (1934), pp. 110 f., none of the later gospels offer anything at all which presupposes a source of independent historical value apart from Mark, so that Mark is actually our only scriptural source for the historical aspect of the passion of Christ. But FINEGAN works on too much of a rule-of-thumb method for his results to be convincing. Regarding the historical value of the most important non-Mark passages in the gospel narratives of the trial, compare the remarks *below*, pp. 88 f. (on John 18:12 ff.); pp. 185 f. and 191 (on John 18:33 ff.); pp. 203 f. (on Luke 23:6-12); pp. 215 ff. (on Matt. 27:19, 24 f.); and pp. 241 f. (on John 19:13).

dignity.<sup>79</sup> John's predilection for stressing the traits in Jesus which show His majesty is no argument that these were invented by him; all the less so since Mark's description of the demeanor of Jesus is essentially the same (*cf.* the arrest, Mark 14:42, 48 f.; the trial, 14:62). Besides, the belief is also expressed in the more recent criticism that John's story of the trial is based upon a literary source independent of the Synoptics.<sup>80</sup> Doubtless the distrust of the Fourth Gospel as a historical source expressed by a large proportion of modern critics is an echo of the assertion made so often and so confidently in the past that this Gospel dates only from the middle or perhaps even the end of the second century. The discovery of an Egyptian papyrus fragment of about 120 A.D. inscribed with the text John 18:31-38 has now proved this late dating to be wrong.<sup>81</sup>

In the historian's view the credibility or otherwise of an account depends not least upon whether the reporter could have had reliable knowledge of the events in question. In our case, too, this question must be posed: May we assume that the Christian community and the evangelists had at their disposal reliable news concerning the sequence of events at the trial of Jesus? This question can be answered in principle with an unhesitating affirmative. The evangelists themselves indicate in several instances the eye and ear witnesses to whom they are indebted for their material. The accounts of the arrest of Jesus and of Peter's denial originate from the chief of the apostles himself, as Lietzmann too takes for granted.<sup>82</sup> The remark about the young man who fled naked (Mark 14:51 f.) may also be regarded as alluding to an

<sup>79</sup> For a more detailed treatment, see A. WIKENHAUSER, *Das Evangelium nach Johannes* (1948), pp. 159 f.; and G. STYLER, "The Place of the Passion in the Johannine Theology," *ATHR*, 29 (1947), 232-237.

<sup>80</sup> M. GOGUEL, *Les sources du récit johannique de la Passion* (1910), *passim*; V. TAYLOR, *The Formation of the Gospel Tradition* (1933), pp. 44-62; R. BULTMANN, *Das Evangelium des Johannes* (1941), pp. 491 f.

<sup>81</sup> Cf. C. H. ROBERTS, *An Unpublished Fragment of the Fourth Gospel in the John Rylands Library* (1935); Joachim JEREMIAS in *ThBl*, 15 (1936), 97-99.

<sup>82</sup> H. LIETZMANN in *ZNW*, 30 (1931), 211-215; likewise E. MEYER, I, 183.

eye-witness of the arrest.<sup>83</sup> For the events which began with the walk to Golgotha, Simon of Cyrene is obviously presented as a witness;<sup>84</sup> the women mentioned in Mark 15:40 must also be so regarded.<sup>85</sup> The Fourth Evangelist definitely alludes to an eye-witness of his account of the death of Jesus (John 19:35), apparently the disciple whom Jesus loved, mentioned shortly before (19:26). Moreover, the execution was carried out under the full public gaze. The trial before Pilate was also public. Only in the case of the dialogues between Pilate and Jesus within the *prætorium*, as reported by John, can no definite witness be mentioned; it is merely in later legends that Pilate's wife became a Christian.<sup>86</sup> There was no apostle or disciple present at the proceedings before the Sanhedrin either; Peter and an anonymous disciple (John 18:15) remained only in the vicinity. But it was not difficult for members of the first Christian community to obtain information about the essentials of the sitting, as at least one member of the Sanhedrin, namely, Joseph of Arimathea, was favorably disposed toward Jesus (Luke 23:51). It must not be overlooked, too, that a considerable number of priests and Pharisees joined the Christian Church (Acts 6:7; 15:5).<sup>87</sup> Anyone who is accustomed to picturing the members of the primitive Church as human beings, and not just as bloodless ciphers, takes it for granted that the disciples left no stone unturned, after the crucifixion, to learn more and more about the last hours of their Master. One wonders, at any rate, whether the mental picture which some addicts of form criticism appear to cherish of the original transmitters of the gospel material is not just as one-sided and unrealistic as that of an earlier epoch, which tended to regard the evangelists as formal historiographers. After all, interest in his-

<sup>83</sup> M. DIBELIUS in ZNW, 30 (1931), 197.

<sup>84</sup> Thus, A. T. BURBRIDGE, "A Further Note on Simon the Crucifer," ExpT, 35 (1933/4), 186.

<sup>85</sup> Cf. E. MEYER, I, 184.

<sup>86</sup> See also Excursus IX.

<sup>87</sup> E. MEYER, I, 187; J. LENGLE, *Hermes*, 70 (1935), 320; M. GOGUEL, *Jésus* (2nd ed., 1950), p. 419, and W. G. KÜMMEL, *Verheissung und Erfüllung* (2nd ed., 1953), p. 43, also refer to this. See also Excursus V.

torical fact is surely much too elementary a human trait to be suppressed as thoroughly as it is frequently believed today to have been by supposed interests of a dogmatic, apologetic, ritualistic, or other, kind.<sup>88</sup> The gospels "are both these things: the transmission of the remembered deeds and words of Jesus which served to form the Christian way of life, and the transmission of what was required to satisfy the biographical interest."<sup>89</sup>

In the reconstruction of the sequence of events in the trial of Jesus attempted in the following pages, we must start out from St. Mark's report, as has been made clear in the foregoing pages. The complementary material contained in the other gospels will then have to be examined, to see if and how it can be built into the framework of Mark's narrative. For reasons of space, the use of later sources cannot always be documented and annotated as fully as one might wish. But that definitely does not say that every pebble has not been carefully examined before being set into the mosaic.

<sup>88</sup> Consider, for instance, the cool assertion of K. GROBEL, made without the slightest attempt at proof, in *Formgeschichte und synoptische Quellenanalyse* (1937), p. 65: "Historisches Interesse . . . ist bei ihnen [the evangelists] überhaupt nicht vorhanden." For criticism, see: E. FLORIT, *Il metodo della 'Storia delle Forme' e sua applicazione al racconto della Passione* (1935); Ed. SCHICK, *Formgeschichte und Synoptikerexegese* (1940), pp. 87-99.

<sup>89</sup> L. KOEHLER, *Das formgeschichtliche Problem des Neuen Testaments* (1927), p. 34.

### 3. THE ARREST

ON THE night of Thursday, while Jesus was praying in the Garden of Olives east of Jerusalem,<sup>1</sup> with His three intimate apostles close at hand, He was arrested by a squad sent out by the Sanhedrin, who used Judas as its guide because of his knowledge of the place and of the wanted person (Mark 14:43-52; Matt. 26:47-56; Luke 22:47-53; John 18:2-11).

How had it come to this?

Anyone who had read the previous chapters in any of the gospels will have been prepared for this outcome. All four accounts make it clear that in His public activities Jesus was, humanly speaking, steering straight for disaster. From quite early in His career, death had been hovering like a dark cloud over His path. Only the "Galilean Spring," the beginning of His ministry, by the shores of Lake Genesareth, seems to have been unclouded and undisturbed. But the more the masses flocked after the great teacher and wonder-worker—superficial though their enthusiasm may have been—the deeper became official Judaism's mistrust of Him and His "new teaching" (Mark 1:28). Mistrust turned to open enmity, and enmity hardened to mortal hatred.

A historically faithful picture of this development cannot be drawn from our scanty sources, but the essential outlines emerge sufficiently clearly from them. We have the synoptic accounts, which describe in the main the Galilean ministry, in contrast to

<sup>1</sup> Regarding the local Christian traditions at Gethsemane, cf. C. KOPP, *Grabungen und Forschungen im Heiligen Land* (1939), pp. 123-125, and the relevant literature noted therein. Also B. REICKE, art., "Gethsemane," *Sv. Bibl. Uppsl.*, I (1948), 700-703.

St. John's Gospel, which pays more attention to the doings of Jesus in Judea. According to Mark and his two fellow synoptics, the Galilean ministry was marked by strife and opposition quite early. Already in his second and third chapters Mark reports five altercations in Galilee. To his account of the last one he adds the remark that the enemies of Jesus were plotting to kill Him (Mark 3:6). From that time onward, it frequently came to sharp disputes. Twice scribes, who had come down from Jerusalem specially for the purpose, are introduced in these disputes as the adversaries of Jesus (Mark 3:22; 7:1). To Jesus Himself it is clear that the gulf between Him and the authoritative leaders of the people is unbridgeable and that the tensions will eventually lead to His death. He expresses this conviction openly in the three great prophecies of the passion which follow on Peter's confession of faith in Him as Messiah (Mark 8:31; 9:31; 10:33 f.). He sets out on His last journey to Jerusalem, and on the Sunday before the passion, enters the city, joyously acclaimed as Messiah by the masses (Mark 11:8-10).<sup>2</sup> True, this event does not seem to have attracted particular notice on the part of His enemies; but another incident, His cleansing of the Temple, so enraged them that they plotted how they would destroy Him (Mark 11:18). In the five disputes which took place in Jerusalem, and on the occasion when He spoke the Parable of the Vinedressers, and also His denunciation of the scribes (Mark 11:27-12:40), it is clear once more that the breach has become irreparable. Two days before the Feast of the Passover, the Sanhedrin finally decide to put their hated adversary to death (Mark 14:1 f.).

The efforts to ensnare Jesus related by John are still more frequent and serious. The scene of these encounters is always Jerusalem; generally the Temple or its precincts, and it is understandable that in the capital, the seat of the highest Jewish re-

<sup>2</sup> T. L. DAVIS, "Was Jesus Compelled?" ExpT, 42 (1930/1), 526, concludes from Luke 19:35 that on the entry into Jerusalem, Jesus was in the power of the crowd. This view is rightly opposed by Th. COOPER, ExpT, 43 (1931/2), 236 f.; J. MEIKLE, *ibid.*, p. 288; R. S. FRAYN, *ibid.*, pp. 381 f.; and J. W. JACK, *ibid.*, pp. 382 f.

ligious authority, the enmity toward Him worked up to a climax more and more rapidly. Already on the occasion of the unnamed feast during which Jesus had healed a sick man at the pool of Bethesda (between the first and second Passover of His public life), "the Jews" tried to kill him (John 5:18; cf. 5:1). This intention of theirs is subsequently referred to several times, once merely by the evangelist (John 7:1), once by the people of Jerusalem (John 7:25), and twice by Jesus Himself (John 7:19; 8:38). But the mass of the people seem to have known nothing as yet of the dark plots of their leaders. Then, during the Feast of Tabernacles, a series of clashes occurred. More trouble followed about three months later at the Feast of the Dedication of the Temple.<sup>3</sup> Soon after the raising of Lazarus, the Sanhedrin definitely decided to put Jesus to death (11:47-53).

What persons and groups of persons emerged as opponents of Jesus? John often speaks in general terms of "the Jews," but it is obvious that this does not mean all the members of the Israelite race living at the time, and this is made clear in John as well as in the synoptics.<sup>4</sup> The Pharisees, the scribes, the high priests, the Sadducees, and the Sanhedrin, which is composed of high priests, scribes and the elders of the people—all these groups are separately named.<sup>5</sup> Besides these, the Herodians emerge in two contexts. The Pharisees formed a politico-religious party which believed in the strictest possible observance of the Law and of the oral tradition evolved from the Law. They had a great influence on the people, particularly on the middle strata, but they also played an important role in the Sanhedrin. For the scribes, the leaders of the Pharisees, learned in theology and in the Law, belonged to that supreme body. The Sadducees, the party of the priests and lay

<sup>3</sup> Feast of Tabernacles: John 7:30, 44, 45-52; 8:20, 38, 59; 9:22. Feast of the Dedication: 10:30 f., 39.

<sup>4</sup> Regarding the expression, "the Jews," in John, cf. W. LÜTGERT, "Die Juden im Johannesevangelium," *Heinrici-Festschrift* (1914), pp. 147-154 ("the Jews" are that part of the population who live according to the Law); W. GUTBROD, *TWB*, III (1938), 378-381; J. MICHL, *MThZ*, 1 (1950, 2), 8 f.; and G. J. CUMING, "The Jews in the Fourth Gospel," *ExpT*, 60 (1949), 290-292.

<sup>5</sup> Mark 11:27; John 11:47; Mark 14:1.

nobility, which was conservative in religion and subservient toward Rome in politics, also numbered scribes in its ranks; but the scribes mentioned in the New Testament may be assumed to have been Pharisees in the main. When high priests are mentioned in the plural in the New Testament, not only those then in office and the former holders of that office still living are meant, but also the chief priests, who were constantly occupied in the Temple.<sup>6</sup> These belonged to the Sadducee school of thought. The group of the elders consisted of the heads of families of the lay nobility of Jerusalem.<sup>7</sup> Hence, all who belonged to the upper strata of society in the country were inimical to Jesus. In the beginning, it seems, they acted more as individuals or as separate groups, but later they appeared as members of the Sanhedrin. And finally there were the Herodians (Mark 3:6; 12:13), doubtless a party favorably-inclined toward the house of Herod, mainly to be found in Galilee, which had Pharisees among its followers. Obviously the Pharisees tried, with the help of the Herodians, to persuade the tetrarch Herod Antipas to take action against Jesus; but the only step which Herod took was to have conveyed to Jesus, toward the end of His Galilean ministry, a threat against His life which amounted in reality to a veiled sentence of banishment from Galilee (Luke 13:31-33).<sup>8</sup> It is worthy of note that neither he, the ruler of Galilee, nor Pilate,<sup>9</sup> the procurator of

<sup>6</sup> Joachim JEREMIAS, *Jerusalem zur Zeit Jesu*, II (1929), 37-40; W. O. E. OESTERLEY, *The Jews and Judaism during the Greek Period* (1941), p. 207, reckons in the number of the "chief priests" only the two or three ex-high priests then living and the one high priest actually in office, with which E. BEVAN, *JThSt*, 43 (1942), 81 f., rightly disagrees.

<sup>7</sup> J. JEREMIAS, *loc. cit.*, pp. 88-100.

<sup>8</sup> Cf. J. BLINZLER, *Herodes Antipas und Jesus Christus* (1947), pp. 16-20.

<sup>9</sup> P. VAN PAASSEN reiterates EISLER's fantastic construction: Shortly before the Passover, a bloody encounter took place in Jerusalem between the followers of Jesus and Roman troops; a group of Galilean friends of Jesus attempted to take possession of the Temple and penetrated the courtyard of the priests by a hidden passage. But the troops of Pilate succeeded in overcoming the intruders, and in doing so, demolished the Tower of Shiloh (*Why Jesus Died* [1949], pp. 107-115). The sources do not offer the slightest grounds for identifying the persons referred to as killed in Luke 13:1-4 with followers of Jesus and connecting the incidents with the fate of Jesus. It is extremely probable that the massacre of the Galileans took place shortly before the Passover which Jesus did not spend in

Judea, seriously troubled Jesus, but that all the attacks and blows came from the Jewish side. A

It may be asked what it was that united the various Jewish parties and ideologies, otherwise so divided, in a common fight against Jesus? It was mainly the great popularity of Jesus, which was observed with uneasiness, anger, and jealousy by all the leading circles (Mark 11:18; John 4:1-3; 7:32, 46; 12:10 f., 19). They feared that their influence on the masses would be at an end if a stop were not put to the activities of Jesus. They spoke of the danger that the Romans might make the messianic movement an excuse for destroying the remnant of Jewish independence which the rule of the Sanhedrin represented (John 11:48). Whether the Sanhedrin really counted on the Romans taking action against Jesus is doubtful; but their fear for their own ascendancy, as expressed in their arguments, was undoubtedly one of the strongest motives for their attitude of enmity toward Him. These considerations of power and politics apparently actuated the non-Pharisee leaders more especially. These people had yet another special reason for being furious with Jesus. His fight against abuses in the Temple (cleansing of the Temple) threatened to deprive them of their rich incomes from the organized trade carried on there. As we see from rabbinical tradition, it was principally members of the house of Annas who carried on a lively trade in requisites for the sacrifices, and in this trade showed themselves unscrupulous stockjobbers.<sup>10</sup> The bitter opposition of the Pharisees toward Jesus rested on religious and dogmatical considerations as well as on considerations of power and politics. The religion of Jesus was a completely strange world to them. He rejected the oral tradition of the time-honored teachers which they so gloried in (Mark 7:1-13). He disregarded in word and deed the casuistical interpre-

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Jerusalem at all. Cf. J. BLINZLER, "Eine Bemerkung zum Geschichtsrahmen des Johannesevangelium," *Bibl*, 36 (1955), 20-35.

<sup>10</sup> For documentation, see BILLERBECK, II, 570 f.; cf. D. CHWOLSON, *Das letzte Passahmahl Christi* (2nd ed., 1908), pp. 122 f., and P. GAECHTER, "The Hatred of the House of Annas," *TS*, 8 (1947), 3-34, esp. 11-13.

*the dead*

tations of the Law which were as sacred to them as the Law itself (Mark 3:2-5; 2:27; John 5:8-13; Luke 13:13-17; 14:1-6). He tolerated the company of sinners, publicans and harlots—people with whom no pious person could have intercourse without being defiled (Mark 2:16; Matt. 11:19; Luke 7:39; 15:1 f.; 19:7). He spoke of God and of His relationship to Him in words which they considered could not be construed otherwise than as blasphemy (Mark 2:7; John 5:18; 7:29 f.; 8:58 f.; 10:30 f.). He carried on a relentless campaign against all religion which regarded only the letter of the Law, and against the formalism which froze into hypocrisy (Mark 12:38-40; Matt. 23:1-39; 5:20; Luke 12:1; 16:15; 18:11), and, in doing so, He shook the very foundations of their lives. Greed for power, avarice and narrow-minded fanaticism—according to the gospel accounts—these were the driving motives among the enemies of Jesus. Any other reasons, which are often brought forward for this enmity, rest more or less on conjecture or imagination. Take, for instance, the view of Louis I. Finkelstein that the conflict between Jesus and His disciples on the one hand and the Jewish authorities and their followers on the other was simply the mutual antipathy between townsfolk and country-folk.<sup>11</sup> Still more frequently, one encounters the assertion that the Jewish authorities' hatred of Jesus was due to the fact that Jesus did not advocate resistance to Rome;<sup>12</sup> that the members of the Sanhedrin had been ready to start a national revolt against the Romans with Jesus, but had turned against Him, embittered and

<sup>11</sup> L. I. FINKELSTEIN, *The Pharisees*, I (1938), 33.

<sup>12</sup> V. G. SIMKHOVITCH, *Toward the Understanding of Jesus* (1937), p. 41. In recent times increasing numbers of scholars try to connect Jesus closely with the Zealot party, attributing Zealot ideas and intentions either to Jesus Himself (particularly EISLER, but also J. S. HOYLAND, *Simon the Zealot* [1930], and, to a much more moderate extent, S. G. F. BRANDON, *The Fall of Jerusalem and the Christian Church* [1951]), or to a considerable proportion of His followers, as J. PICKL, *Messiaskönig Jesus* (1935), *passim*; CULLMANN, *op. cit.*, pp. 5-15; H. G. WOOD, "Interpreting this Time," NTS, 2 (1956), 262-266. For an assessment of these views, cf. J. BLINZLER, "Simon der Apostel, Simon der Herrenbruder und Bischof Symeon von Jerusalem," *Passauer Studien* (Festschrift in honor of Bishop Simon K. Landesdorfer) (1953), pp. 25-55, esp. 34-36.

disappointed, when He had not given the sign to rebel.<sup>13</sup> Of such a motive the gospels know nothing.<sup>14</sup>

The gospels give us some idea of the way in which, and the means by which, the enemies of Jesus proceeded against Him. At first they seem to have contented themselves with demanding from Him a justification of His attitude (Mark 7:5; 2:16, 18, 24; 11:27 f.; John *passim*). Then they set about trying to turn the people against Him. They cast suspicion on His miracles as works of the devil (Mark 3:22; John 7:20; 8:48, 52; 10:20; Matt. 10:25). They demanded a spectacular miracle in order to show Him up when it did not happen (Mark 8, 11); by putting abstruse questions to Him they hoped to make Him seem ridiculous (Mark 12: 18-23); they tried to force a decision on controversial questions from Him, in order thereby to bring Him into conflict with some party (Mark 10:2); they put to Him a question of the hour, the answering of which would bring Him into conflict either with popular sentiment or with the Roman occupation forces (Mark 12:13-17; Luke 11:53 f.; John 8:5 f.). But soon their attacks became more serious. They threatened His disciples with expulsion from the Synagogue (John 9:22; 12:42); then, finally, they began to think of doing away with the Master Himself (John 5:18; Mark 3:6). His enemies in Jerusalem more definitely considered this plan for the first time, after the healing of the sick man at

<sup>13</sup> A. KROPP, *Die neue Ordnung*, 5 (1951), 107.

<sup>14</sup> Jocz, *op. cit.*, p. 33, rightly emphasizes the fact that the gospels characterize the conflict as mainly a religious one. The same book also examines the relations of Jesus with the Sadducees (pp. 15-17, mainly in opposition to R. LESZYNSKY, *Die Sadduzäer* [1913], who asserts that a close community of ideas existed between Jesus and the Sadducees), and with the Pharisees (pp. 17-21). As opposing the view taken by D. W. RIDDLE (*Jesus and the Pharisees* [1938]) that the evangelists drew a distorted picture of the Jewish enemies of Jesus and especially of the Pharisees; cf. particularly A. CHARUE, *L'incrédulité des juifs dans le Nouveau Testament* (1929), especially p. 23. It may well be that John's ignoring of the Sadducees, whose influence gave its tone to the Sanhedrin of the time of Jesus, was due to the fact that Sadduceeism had lost its importance by the time John's Gospel came into being. In the synoptic gospels, on the other hand, the roles played by the various parties are probably correctly distributed on the whole. If the Sadducees are less often in evidence in them also, the explanation is that the synoptic gospels concern themselves mainly with describing the activities of Jesus among the simple folk of Galilee and the surrounding districts.

the pool of Bethesda (apparently some months before the second Passover of His public life); His enemies in Galilee, after the cure of a sick man in the Synagogue (presumably about the same time). Whether they had in mind an illegal killing or lynching, or whether they intended handing Him over to the competent authorities for trial on a capital charge, is not quite clear. Perhaps they kept both possibilities in mind. This would explain the fact that they tried several times to arrest Jesus in Jerusalem—on the Feast of Tabernacles, on the Feast of the Dedication of the Temple, and again after He had driven the hucksters from the Temple (John 7:30, 32, 44-52; 10:39; Mark 11:18)—which last could only be the prelude to a formal criminal trial—and that during the same period they made two attempts to stone Him (John 8:59; 10:31). This would undoubtedly have been a tumultuous act of lynch law. The deep impression which the personality of Jesus made on the masses repeatedly prevented these plans from being carried out (John 7:46; Mark 12:12). The plot of the Pharisees and Herodians in Galilee apparently fell through because the tetrarch, who had learned some wisdom from the John the Baptist affair, did not follow it up seriously. The unsuccessful attempt of the inhabitants of Nazareth to throw their fellow-townsmen down from the brow of a hill (Luke 4:29) was apparently more a matter of private enmity and obviously had nothing to do with the plans of the Pharisees. After the raising of Lazarus, the Sanhedrin finally decided to arrest the hated prophet and preacher and condemn Him to death by a real legal trial.

The sources also yield us information on how Jesus reacted to His adversaries and their attacks. According to them, Jesus, on principle, did not refuse to engage in public disputations with them (cf. Mark 12:13-17; Luke 13:17; 14:1-6). He continued His teaching activity even when His life was directly threatened (John 5:19-47; 7:19, 25; 8:12-29, 37; 10:33). But as long as He knew that His hour had not yet come, He availed Himself of the possibility of evading their physical violence. In doing this it would seem that He never took refuge in a "miracle of self-help." After

the first attempt to stone Him, He hid Himself; and He evaded, by the same means, the effort to arrest Him on the Feast of the Dedication of the Temple (John 8:59; 10:39; cf. Luke 4:30). Once He traveled in disguise to Jerusalem (John 7:10). Quite often, too, He resorted to avoiding the neighborhood of His enemies for a time. For instance, to avoid conflicts with the Pharisees, He removed from Judea to Galilee after His baptizing activities (John 4:1-3). There, again, He fled from the Pharisees several times, at one time taking Himself off to the pagan northern region, at another time withdrawing to the eastern shore of the Sea of Galilee (Mark 7:24; 8:13; cf. Matt. 12:15; 14:13). The incident, recorded in Luke 13:31-33, shows that the striking restlessness of the last Galilean period was not due to fear of being trapped by the tetrarch Antipas. Because the Jews there were seeking to put Him to death, He did not at first go directly to Judea for the Feast of Tabernacles (John 7:1). After the sharp clash with them on the Feast of the Dedication He left Judea, and spent some time in lonely Peræa (John 10:40). The Sanhedrin's decision to bring about His death caused Him to go to Ephrem, on the edge of the desert, with His disciples (John 11:54). Even during His last sojourn in Jerusalem, He was sometimes in hiding (John 12:36). He spent His nights outside the town, at Bethany or on the Mount of Olives (Mark 11:11, 19; Luke 21:37; John 18:2). But when He crossed over the brook Cedron after the Last Supper and entered the Garden of Gethsemane on the Mount of Olives (John 18:4; Mark 14:42), He not only knew what was before Him but was prepared to take it on Himself. His hour had come.

At the sitting of the Sanhedrin which took place some time before Passover, at which it was decided to accomplish the death of Jesus, the high priest Caiphas took the leading part. The Pharisees referred to the danger that the Romans would take away Temple and nation from the Jews if the messianic movement were to spread, but seemed to be undecided at first as to the measures to be taken against Jesus. But Caiphas, cold-blooded and

calculating politician that he was, reproached them contemptuously for their lack of penetration, and declared point-blank that it was better that one man should die for the people than that the whole nation should perish and—though he did not say it directly, of course—than that the power which he and his colleagues possessed should be broken (John 11:47-50). This opinion won general acceptance. Two days before the Passover (according to Mark 14:1 f.) it had been unanimously agreed that, in order to avoid tumult among the people, Jesus should be seized by stealth, and “not on the feast.” The evangelist John tells, in addition, of two further decisions on the part of the high priests, namely, to put Lazarus to death also, if possible, because many Jews were going over to Jesus on his account (John 12:10 f.), and that the people should be encouraged to report the whereabouts of Jesus, so that He could be arrested (John 11:57).<sup>15</sup> This appeal to the public, however it may have been worded, could mean nothing else than this: Let anyone who knows where Jesus can be quietly seized kindly report it.

Naturally only His followers could know where Jesus was, when He was not in the public view. And actually, it was a member of His most intimate inner circle of disciples, Judas Iscariot, one of the Twelve, who reacted to the official warrant for the apprehension of Jesus. He visited the Sanhedrin, offered to deliver Jesus into their hands, and was promised a sum of money by the pleasantly surprised high priests (according to Matt. 26:15, thirty pieces of silver, the price of a slave).<sup>16</sup> Judas knew on the Thursday evening, at latest, that Jesus would spend that night in a garden on the Mount of Olives. He left the room of the Last Supper prematurely in order to inform the members of the Sanhedrin and lead their spies to the spot.

The gospels leave scarcely any doubt that Judas's betrayal consisted in making known to the Jewish authorities the place where

<sup>15</sup> See esp. E. BICKERMANN, “Utilitas crucis,” RHR, 112 (1935), 215 f.

<sup>16</sup> Cf. U. HOLZMEISTER, “Num Iudas Christum pretio vulgari servorum vendiderit,” VD, 23 (1943), 65-70. R. FOLLET, “Constituerunt ei 30 argenteos,” VD, 29 (1951), 98-100.

Jesus could most probably be arrested without causing a sensation.<sup>17</sup> Decisive in this connection are the texts, Mark 14:11, when compared with v. 10 of same; and 14:44; Luke 22:48; John 18:2 and Acts 1:16. The more recent commentators have frequently tried to place a different interpretation upon the betrayal. According to one,<sup>18</sup> what Judas betrayed to the high priests was the messianic secret of Jesus; it was His words about destroying the Temple and restoring it, according to another;<sup>19</sup> while yet another has maintained that it was the Last Supper experience insofar as this was a celebration of the victory of the New Kingdom.<sup>20</sup> The hypothesis that Judas was convinced from His discourse at the Last Supper that Jesus intended to start a revolution the next day, and had brought this news to the high priests the same night, and that the latter had decided to forestall the action by immediate arrest, has just as little support in the gospels.<sup>21</sup>

On what grounds the arrest was made out to be legally justified, the gospels do not say. Possible impeachments are: blasphemy,<sup>22</sup> violation of the Sabbath,<sup>23</sup> the practice of prophecy and

<sup>17</sup> BICKERMANN, *op. cit.*, p. 216. Cf. also T. W. MANSON, *The Servant-Messiah* (1953), p. 86: "What Judas sold to the chief priests was his inside knowledge of the place where Jesus and His disciples would be that night. This act can only be described as a betrayal." Likewise, CULLMANN, *op. cit.*, p. 27.

<sup>18</sup> Thus, K. BORNHÄUSER, *Zeiten und Stunden der Leidens- und Auferstehungsgeschichte. Zum Petrusbekenntnis und zur Hohenpriesterfrage* (1921), pp. 73 f., 78 f. A. SCHWEITZER, *Das Messianitäts- und Leidensgeheimnis* (1929), pp. 79 f., and *Geschichte der Leben-Jesu-Forschung* (5th ed., 1933), pp. 441 f.; G. BUCHHEIT, *Judas Iskarioth* (1954), pp. 105-107, 141. This is considered also by H. WINDISCH, *Der messianische Krieg und das Urchristentum* (1909), p. 37. If this interpretation of the "betrayal" (or one of the others mentioned above) were right, one would have expected Judas to appear before the Sanhedrin as a witness, but not a single one of the reports indicates that he did so.

<sup>19</sup> GOGUEL, *op. cit.*, p. 422.

<sup>20</sup> H. PREISKER, "Der Verrat des Judas und das Abendmahl," ZNW, 41 (1942), 151-155; similarly, K. BUCHHEIM, *Das messianische Reich* (1948), p. 282: Judas betrayed that at and by the Last Supper, Jesus abolished the Jewish Passover.

<sup>21</sup> J. PICKL, *Messias König Jesus* (1935), pp. 69-72.

<sup>22</sup> Mark 2:7; John 5:18; 8:59; cf. Lev. 24:16; Ex. 22:27; Josephus *Antiquities* iv. 8. 6. § 202.

<sup>23</sup> Mark 2:24; 3:2-6; John 5:16; 9:16 & elsewhere; cf. Num. 15:35; Ex. 31:14 f.; 35:2; Mishna Sanh. VII 4a.

magic,<sup>24</sup> and, possibly also, being a pseudoprophet.<sup>25</sup>

But the gospel accounts are also silent regarding the motives of Judas's treacherous act. His avarice, which is shown up once (John 12:6), may have played a part, but certainly did not constitute the main motive. Perhaps he had looked for a nationalistic, political Messiah in Jesus, who would restore the throne and the kingdom of David, and been most bitterly disappointed in the end. As the name, Iscariot—"man from Cariot,"<sup>26</sup> which was also his father's surname—betrays, his family was from Cariot, in southern Judea (John 6:71; 13:26). Hence, in the circle of the apostles, who, as far as we know, were all from Galilee, he was the only Judean. This makes his difference in character appear a little more comprehensible. Otherwise, this dark and sinister figure presents a psychological puzzle which even the poetic imagination cannot completely illuminate.<sup>27</sup>

The surprise attack by night went off according to plan. After Judas had made Jesus known, as arranged, by the customary kiss of greeting, the armed men immediately laid hands on Him. In bitterly ironical words, Jesus inveighed against the unusual show of force which had been brought to bear against Him, as if He were an armed robber; but He offered no resistance. The feeble attempt at defense made by a disciple—according to John it was the temperamental Peter who struck off the right ear of a slave of the high priest—was stopped by Jesus Himself (Mark 14:47; John 18:10 f.; Matt. 26:51 f.; Luke 22:49-51). The disciples fled and obviously were not stopped from doing so (Mark 14:50).

<sup>24</sup> Mark 3:22; John 8:48; 10:20; cf. Lev. 19:26, 31; Deut. 18:10 f.; Mishna Sanh. VII, 7 b. 11.

<sup>25</sup> Mark 6:15; Matt. 21:11, 46; Luke 7:16, 39; John 6:14; 7:40, 52; 9:17; cf. Deut. 13:6; 18:20; Mishna Sanh. XI 5.

<sup>26</sup> This is the ordinary interpretation of the surname. A different one is that, for instance, of C. C. TORREY, "The Name Iscariot," HThR, 36 (1943), 51-62 and ZAW, 65 (1953), 246 f., who derives it from the Aramaic *shiqrai* (*sh'qarya*) meaning false, hypocritical; likewise R. B. HALAS, *Judas Iscariot* (1946), p. 16. The interpretation of H. INGHOLT, in VD, 32 (1954), 299, is different again.

<sup>27</sup> Regarding Judas, cf. F. W. MAIER, LThK, V (1933), 671 f., and D. HAUGG, *Judas Iskarioth in den ntl. Berichten* (1930). For Jewish interpretations cf. G. LINDESKOG, *Die Jesusfrage im neuzeitlichen Judentum* (1938), pp. 288 f.

For an understanding of the trial it is very important to know exactly who the people were who arrested Jesus. From what has gone on before, the reader assumes that they were persons sent by the Sanhedrin, and this is confirmed by Mark who remarks that those who made the arrest came "from the chief priests and the scribes and the elders" (14:43). Moreover, the fact attested by all the evangelists, that Jesus was then led to the house of the high priest, corroborates this. When John mentions "attendants from the chief priests and Pharisees" (18:3), he too certainly means men who were in the service of the Sanhedrin and had been authorized by that body to carry out the arrest. Hence, despite the word, *ὄχλος*, meaning mob, crowd, mass of people, used by the synoptics, they are definitely not to be taken as being a motley, irregularly-composed gang. When Matthew actually speaks of a *ὄχλος πλῆθος*, this is to be understood in a relative sense: even a squad of twelve men can be called a great crowd when it sallies forth to arrest one single, unarmed person, not determined to resist. Therefore, it is well not to overestimate the numerical strength of the force. A large squad was neither necessary—as the demeanor of Jesus up to then did not seem to warrant it<sup>28</sup>—nor practical, since it was of course desirable to avoid causing a sensation. To be sure, the task could not have been entrusted to a mere handful of men, either; the presence of the eleven apostles, who might be capable of spontaneous resistance, had to be reckoned with; and besides, Jesus had already repeatedly evaded efforts to arrest Him (John 7:32; 8:20).

But according to Luke, there were also high priests and elders present at the scene in the garden (22:52). One might possibly think that these dignitaries had come there out of curiosity or to

<sup>28</sup> Luke 22:36-38 does not contradict this; cf. in this connection Ad. SCHLATTER's monograph, *Die beiden Schwerter* (1916); also W. WESTERN, "The Enigma of the Swords: St. Luke 22, 38," *ExpT*, 52 (1940/1), 357, and W. BIENERT, *Der älteste nichtchristliche Jesusbericht* (1936), pp. 271-278. BIENERT comes to the conclusion that the swords were intended neither for attack nor for defending Jesus against arrest; their only purpose was to save the disciples themselves from being murdered. Cf. CULLMANN, *op. cit.*, pp. 21-23.

see that their orders were strictly carried out. But perhaps this text is only a case of literary anticipation, so to speak. As John tells us (18:20 f.), immediately after His arrest, Jesus had protested to Annas and his colleagues, in the house of the former high priest, that He had always taught publicly, in the Synagogue or in the Temple. Now, it is possible that Luke knew this tradition, but simply amalgamated it with the arrest scene, in which, according to Mark, Jesus spoke similar words (Mark 14:49 = Luke 22:53).<sup>29</sup>

If the men sent to arrest Jesus acted on the orders, and with the full authority, of the Sanhedrin, they must have belonged to a troop or body whose duties included the making of arrests. They are usually believed to have been part of the Temple guard. But it appears that normally the Temple Levites had to maintain order and security within the Temple precincts only. Outside the Temple precincts, they were only utilized as a military troop in times of crisis as, for instance, under the Emperor Claudius, during a war between the Samaritans and the Galileans,<sup>30</sup> and during the Jewish War, apparently, to guard the city walls.<sup>31</sup> We know, to be sure, that the Levites had power to arrest persons within the precincts of the sanctuary (Acts 4:1-3); but neither the New Testament nor any other source relates a case of the Temple Levites *independently* carrying out an arrest elsewhere. Now, the New Testament gives us clearly to understand that, besides the Temple police, the Sanhedrin had other police or court servants at its disposal. These had the task of maintaining public order in town and country, making arrests, taking accused persons before the court, guarding prisoners, carrying out sentences—other than

<sup>29</sup> Cf. G. E. W. VAN HILLE, *Mnem* (III s.), 10 (1942), 242 f. and P. BENOIT, "Jésus devant le Sanhédrin," *Ang*, 20 (1943), 159 f. Be it noted that Luke, though he indicates the presence of the chief priests and elders at the nocturnal arrest, only places the meeting of the Sanhedrin at daybreak.

<sup>30</sup> This can be gathered from *Antiquities* xx. 6. 2. § 131, where it is told that following those disturbances Quadratus sent Ananos, the officer of the Temple, to Rome in chains.

<sup>31</sup> *Jewish War* v. 6. 3. § 273. Matt. 27:65 does not refer to a Temple guard in any case.

death sentences—passed by the Jewish court, and generally speaking, taking on all the lesser tasks incumbent upon the Jewish authorities.<sup>32</sup> The “attendants of the high priests and Pharisees” who appeared in Gethsemane must have been police or court servants of this kind.

But besides these, according to the Fourth Evangelist, yet an-

<sup>32</sup> Wherever *ὑπηρέται* (“attendants”) are mentioned in the N. T. in connection with the Sanhedrin, this police force is meant, and there is no ground for identifying the force so designated with the special Temple Levites. Thus, the attendants mentioned together with the chief priests in John 19:6 are obviously court servants or police. The same obviously applies to John 18:18, 22; Mark 14:54, 65 (Matt. 26:58). That Temple Levites are meant in John 7:32, 45 f., as is commonly assumed, is not admissible. It was not the Temple officer who sent these people out, but the Sanhedrin (“the rulers and Pharisees”); besides, it is not stated that those attendants were meant to or tried to arrest Jesus in the Temple. Wherever the Temple is named or clearly to be assumed as the scene of an intended arrest, the persons sent to make the arrest are not indicated as “attendants” (of the Sanhedrin), compare John 7:30 with 7:28; 7:44 with 7:37. Cf. also 8:20, 59; 10:31, 39. The persons, however, who arrested the apostles at the instance of the Sanhedrin in Acts 4:3 must be Levites (the scene of the arrest is the Temple: 3:1 f., 8, 11; besides, the officer of the Temple is explicitly mentioned as taking part: 4:1) hence, they are not called “attendants” here. In Acts 5:18, on the other hand, there is no question of the Temple being the scene; the “attendants” of the sanhedrists, 5:22, are court servants just as are the “guards” in 5:23. The passage 5:24 ff. is another matter. If the officer of the Temple is mentioned in 5:24, that is because he was a member of the Sanhedrin. Besides, the action which follows is probably being prepared then. The apostles, who are teaching in the Temple (5:25) are brought out “without violence” by the officer of the Temple and set before the Sanhedrin. The “officers” who accompany the officer of the Temple on this errand are not Levites, as one might think at first, but court servants again. The news that the apostles were preaching in the Temple reached the sanhedrists during a sitting (5:21, 25); hence, it was only natural that the Sanhedrin should send the officer of the Temple, who was present, back to the Temple, and give him the Sanhedrin servants, who were likewise present, as escort. The Temple Levites, who alone could make arrests within the Temple, did not need to stir as no arrest was intended. Instead the Temple officer was to induce the apostles to go with him voluntarily, as it was desired to avoid angering the populace. Hence the servants were only sent with him for his personal protection. And finally, the “servants” who scourged the apostles were likewise servants of the court. The same word is used for hangman or torturer by Josephus in *The Jewish War* i. 33. 4. § 655 and *Antiquities* xvi. 8. 1. § 232. This use of the word seems to be preserved in the Talmud too: The “servants of the high priests” who beat the people with sticks, according to the well-known abusive ballad on the high-priestly families, dating from the first century A.D., were certainly neither private slaves nor Temple Levites but court servants (*Pesachim* 57a; *Tos Menachoth* 13, 21). Cf. also Matt. 5:25: the judge hands over the condemned man to “the attendant” to be cast into prison.

other group took part in the action in Gethsemane. He reports that, besides the servants of the Sanhedrin, Judas had led to the garden "the cohort" (σπεῖρα) together with the "tribune" (χιλίαρχος) obviously commanding it (John 18:3, 12). Undoubtedly, both designations make us think immediately of the Roman military, of the Roman garrison stationed in the fortress of Antonia, which usually consisted of a cohort under the command of a military tribune.<sup>33</sup> Most commentators understand John's information in this sense.<sup>34</sup> Not a few, however, consider that it is an error on the part of the evangelist or his source.<sup>35</sup> Actually, the participation of the Roman military in the arrest of Jesus is extremely improbable.<sup>36</sup> In the first place, it must strike one that

<sup>33</sup> For σπεῖρα as designation of the Roman cohort of Jerusalem, see Mark 15:16 = Matt. 27:27; Acts 21:31; Cf. Acts 10:1; 27:1. For χιλίαρχος as designation of the commander of this cohort, see Acts 21:31-33, 37; 22:24, 26-29; 23:10, 15, 17-19, 22; 24:7, 22; 25:23.

<sup>34</sup> Finally, cf. F. BÜCHSEL, *Das Evangelium nach Johannes* (4th ed., 1946), p. 164; Cardinal Th. INNITZER, *Leidens- und Verklärungsgeschichte Jesu Christi* (4th ed., 1948), p. 134; A. WIKENHAUSER, *Das Evangelium nach Johannes* (1948), p. 262; G. RICCIOTTI, *The Life of Christ* (1947), p. 590; J. SCHMID, *Das Evangelium nach Markus* (3rd ed., 1954), p. 278.

<sup>35</sup> T. MOMMSEN, *Römisches Strafrecht* (1899), p. 240, n. 2; R. VON MAYR, *op. cit.*, p. 273, n. 7; REGNAULT, *op. cit.*, p. 93; HUSBAND, *op. cit.*, p. 96; DOERR, *op. cit.*, pp. 18 f.; W. BAUER, *Das Johannes-Evangelium* (3rd ed., 1933), p. 209; F. LUNDGREEN, "Das palästinische Heerwesen in der ntl. Zeit," *Palästinajahrbuch*, 17 (1921), 46-63; G. E. W. VAN HILLE, *op. cit.*, p. 240; A. MANASSERO, *Ecce Homo* (1952), pp. 23 ff. Rudolf BULTMANN, *Das Evangelium des Johannes* (1941), p. 493, considers the arrest by Roman soldiers to be historically correct, nevertheless he condemns the evangelist's account as "not historical." The doubts on the ground of the history of law, formerly in the forefront, are not decisive here; cf. BICKERMANN, *op. cit.*, p. 218, and L. WENGER, *Quellen des römischen Rechts* (1953), p. 288, where it is shown, mainly on the strength of papyrus sources, that cooperation between local bodies and Roman forces in making arrests was entirely possible.

<sup>36</sup> The equipment with swords and clubs (Mark, Matt.) or with lanterns, torches and weapons (John) does not help toward a conclusion regarding the composition of the force. Roman soldiers as well as Jewish police could be so equipped. Even the civilian Peter carried a sword. On the other hand, Roman soldiers could also use sticks (Josephus *Antiquities* xviii. 3. 2. § 61 f.; *Jewish War* ii. 9. 4. § 176 f.). Torches and swords were among the requisites of the Temple Guard (*Middot* I 2); the sword, the wooden staff and the lance are mentioned as Jewish weapons, *Schabbat* VI 4; the "sticks" of the servants of the high priests are spoken of in the abusive ballad mentioned in the Talmud (see n. 32 above).

the synoptics know nothing of this important fact. According to them, the squad making the arrest set out from the meeting place of the Sanhedrin (Matthew), or, at least, at the command of the Sanhedrin (Mark), for Gethsemane, not from the fortress Antonia—not even some of them—and not at the command of the procurator. One cannot explain the silence of the synoptics by saying, for instance, that they had no knowledge of, or interest in, the Roman troops in Jerusalem; a whole series of texts prove the contrary.<sup>37</sup> Nor can one assert that the synoptics were more anxious than John was to shield the Romans from blame; the facts show, rather, the contrary. It is of importance, moreover, that Luke, who shows himself in the Acts so familiar with Roman military matters—he even knows the names of individual cohorts<sup>38</sup>—does not indicate by as much as a syllable the presence of Roman soldiers in Gethsemane. A *σπεῖρα* (cohort) consisted of about six hundred men; such a body of troops would have been quite out of place in Gethsemane.<sup>39</sup> The word could also be translated as *maniple*, it is true. A *maniple* consisted of only two or three hundred men. But even such a force of soldiers would have been quite ridiculous for the secret arrest of one single individual. The words of Jesus to his captors: “I was daily with you in the Temple teaching, and you did not lay hands on me” (Mark 14:49), show that those addressed, or at least the more important among them, were Jews. Pilate, without whose knowledge and orders the cohorts could not have been used, according to the gospels obviously had no knowledge of the case of Jesus before He was brought before his tribunal.<sup>40</sup> That the dream of Pilate’s wife

<sup>37</sup> Mark 15:16 f. = Matt. 27:27 ff. (cf. Luke 23:36); Mark 15:39 = Matt. 27:54 = Luke 23:47; Mark 15:44 f.; Matt. 27:62–66; 28:11–15.

<sup>38</sup> Acts 10:1; 27:1.

<sup>39</sup> Likewise A. STEINWENTER, “Il processo di Gesù,” *Ius* (n.s.), 3 (1952), 471–490, esp. 484. The cohort was the tenth part of a legion, which in the time of Augustus consisted of about 6,000 men irrespective of auxiliary troops, see BAUER’s Greek-German N.T. Dictionary, 1384, 848. U. HOLZMEISTER, *ZkTh*, 39 (1915), 330, n. 2, assumes the cohort stationed in the Antonia to be 1000 men, but thinks that only a detachment of the force turned out.

<sup>40</sup> Even M. GOGUEL (*Jésus* [2nd ed., 1950], p. 434), though he believes the

(Matt. 27:19) proves a previous understanding between the Sanhedrin and the governor<sup>41</sup> is arguable, as we know nothing more about the content and character of the dream. And this dream, if it really arose from natural causes, could well have been evoked by earlier tales of the Jews' enmity toward Jesus. If Jesus had been arrested with the help of Roman soldiers, He would certainly have been taken to a Roman prison and not, as all the gospels testify, brought before the Jewish hierarchs.

For this reason, one must surely regard it as out of the question that the Roman military had part in taking Jesus prisoner. Nevertheless, there is no proof of a historical error in John's account, for it is questionable whether he really meant to indicate the Roman military by the two terms named.

At any rate, it is incorrect or at least inexact to say, as it has repeatedly been said, that John mentions a "Roman cohort" as taking part. He does not use the word "Roman" at all. The only text which seems to show the *χιλίαρχος* (tribune) and his detachment as being non-Jewish is John 18:12, in that in this text a second group, "the attendants of the Jews" is differentiated from these. But here the expression "the Jews," as is proved by comparing 18:3 and 18:14 with 11:47-50 means, not the Jews as a nation, but the members of the Sanhedrin. Now, one could certainly say: If the squad (*σπεῖρα*) is differentiated from "the attendants of the Jews," then it certainly did not consist of subordinates of the Sanhedrin. This conclusion is not convincing either, for the designation "attendants of the Jews" (18:12) is only an abbreviated repetition of the description, "attendants (*ἐκ*) of the high priests and Pharisees" (18:3), so that the distinction does not necessarily mean anything more than this: that the squad (*σπεῖρα*) in contrast to the "attendants," did not set out from the meeting place of the Sanhedrin to effect the arrest.

Now, John's account itself contains some features which make

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arrest to have been agreed upon between the Jewish authorities and Pilate, has to admit: "Pilate n'est pas encore au courant de son affaire" (p. 431).

<sup>41</sup> Th. ZAHN, *Das Evangelium des Johannes* (1908), p. 623, n. 40; F. MORISON, *Who Moved Back the Stone?* (1950), pp. 49-52.

it seem unlikely that the evangelist viewed the squad (σπεῖρα) and its commander (χιλίαρχος) as Roman soldiers. Chief among these is the text 18:12 f. That a Roman military tribune should condescend to present his prisoner first to Annas, and this, moreover, because the ex-high priest happened to be the father-in-law of the high priest then in office, is difficult to believe; and it cannot have been the opinion of the evangelist either. It is equally difficult to believe that he could imagine that the Roman tribune should have allowed the deposed high priest to order him to take Jesus on further (18:24). That Jesus was really taken by the tribune (χιλίαρχος) and his men not merely to Annas, as John states explicitly in 18:12, but also to Caiphas, is to be gathered indirectly from 18:12, namely, from the word "first"<sup>42</sup> (in connection with 18:24). This decisive participation of the tribune and his company in the arrest and delivering up of Jesus also destroys the so-called "cover" theory, that is, the supposition that the Roman military tribune and his men were only to intervene in case of resistance being offered, but did not take part in the arrest itself.<sup>43</sup> Moreover, the fact that the cohort (σπεῖρα) is named *before* the attendants of the Sanhedrin in 18:3 and 12 is also against this theory. Besides, if John had the Roman military in his mind it would be incomprehensible that he should completely lose sight of this important or, at least, particularly interesting group in the further course of his story. According to 18:18 (cf. also 18:22) there are only "servants and attendants," that is to say, only the personnel subordinate to the Jewish dignitaries, present in the courtyard of the high priest shortly after the arrest, and the group which finally takes Jesus to Pilate consists likewise only of Jews (18:28).

This being so, the question arises whether it is quite impossible

<sup>42</sup> Cf. GOGUEL, *op. cit.*, p. 431: "Ce *πρῶτον* suppose logiquement un *δεύτερον*." To be sure, he sees the second delivering up reported in John 18:28, but he definitely does not get the meaning of the evangelist, who distinctly indicates that the people who take Jesus into the praetorium are Jews, not Roman soldiers (v. 28b).

<sup>43</sup> A. BRÜLL, TQ, 83 (1901), 186; K. KASTNER, *Jesus vor Pilatus* (1912), p. 13; A. WIKENHAUSER, *op. cit.*, p. 262; M.-J. LAGRANGE, *The Gospel of Jesus Christ* (1949), p. 566; RICCIOTTI, *op. cit.*, p. 590; F. M. BRAUN, "La Passion de Notre-Seigneur Jésus-Christ selon saint Jean," NRT, 60 (1933), 292.

that the expressions *σπεῖρα* and *χιλίαρχος* are used by John to designate the Jewish military. Neither word occurs again in his gospel; therefore we have no guarantee that he has used them in the same sense as, for instance, the author of the Acts. Where John mentions members of the Roman occupation forces, he calls them simply "soldiers" (19:2, 23, 24, 32, 34). In the Greek Old Testament the word *σπεῖρα* is used invariably to indicate non-Roman troops, and used, moreover, in the general sense of "squad," "company," not in the special technical Roman meaning of "cohort" (Judith 14:11; 2 Macc. 8:23; 12:20, 22). And the word *χιλίαρχος* which occurs twenty-nine times, means at one time, a civil, at another time, a military official, but never a Roman military tribune. Josephus, too, uses both terms several times to indicate Jewish military bodies (as in *Antiquities* xvii. 9. 3. § 215; *The Jewish War* ii. 1. 3. § 11; cf. ii. 20. 7. § 578). In secular Greek idiom, the word, *χιλίαρχος*, which literally means the leader of a thousand men, is employed even by classical authors for every kind of officer, also those not of an exclusively military character.<sup>44</sup> If one considers this lexicological finding in conjunction with the fact that the only military or similarly organized body which the Jewish authorities of Jerusalem had at their disposal at the time, besides the Sanhedrin police, was the Temple guard, then the interpretation that by "cohort" John meant a more or less large detachment of the Temple guard,<sup>45</sup> and by "the tribune," their leader, perhaps the Temple colonel, would appear to be a completely acceptable alternative solution of our problem.<sup>46</sup> When the author of the Acts calls the colonel of the Temple guard the "officer of the Temple" (4:1; 5:24; cf. 5:26), this does not prove that John, who does not name the officer elsewhere, was bound to

<sup>44</sup> HUSBAND, *op. cit.*, p. 96 (reference to Xenophon and Æschylus); E. KLOSTERMANN, *Das Markus-Evangelium* (3rd ed., 1936), p. 60 (on Mark 6:21).

<sup>45</sup> The Levitical guard, which was on duty at night at the outer gates and in the Forecourt of the Gentiles, consisted of 21 men: *Middot* I 1.

<sup>46</sup> R. BESNIER, too, "Le procès du Christ," *RHDr*, 18 (1950), 198, n. 1, takes the *chiliarchos* to be the Temple officer; cf. also M. MEINERTZ, "Der Prozess Jesu," *Das Heilige Land*, 83 (1951), 9.

this expression. Why he chooses the terms cohort (*σπειρα*) and tribune (*χιλίαρχος*) may perhaps be due to the fact that both words had passed over as borrowed foreign words into the rabbinical language. A certain confirmation of this interpretation of the words in question<sup>47</sup> is offered by Luke's account, which indicates the presence of captains of the Temple (22:4, 52) both at the pact with Judas and at the arrest. As for the undoubtedly remarkable use of the definite article in John 18:3—"the cohort" (*σπειρα*) it must be said that the usual explanation, "the well-known cohort (*σπειρα*) of the Roman occupation period," in other words, the Roman occupation cohort, is not the only possible, in fact, not even the most natural, explanation, since John never speaks of the occupation cohort anywhere in his gospel. The use of the definite article could be a sign that the evangelist is making use here of a source in which the bargaining of Judas with the leaders of the Jews had been mentioned in a previous passage which he had passed over; or it may have been used on the supposition that his readers had already acquired from Christian sermons a certain knowledge of the events described.<sup>48</sup> Or finally, it may mean that the troop indicated was the only one in question, given the existing state of things.<sup>49</sup> It is nowise incredible that the Sanhedrin should have considered the normally available court or police attendants to be inadequate in this case and therefore had them reinforced by the Temple guard, who normally only served for the protection of the Temple.

Hence, while the synoptics distinctly indicate the force carrying

<sup>47</sup> It is supported, moreover, by the visible fact that John was even more anxious than the synoptics to keep in the background the part played by the Romans in the condemnation of Jesus. When GOGUEL (*op. cit.*, p. 374, n. 3) sees precisely in this the proof that John must have taken over the (Roman) *speira* and *chiliarchos* from an older tradition one asks oneself why he should have taken over precisely this by no means necessary detail which runs contrary to the tendency of his narrative.

<sup>48</sup> "The detachment of whose presence in Gethsemane you have heard already"; cf. n. 51 below.

<sup>49</sup> "The troops which the Sanhedrin was able to place at the disposal of Judas for the purpose, in addition to the Court servants," see BLASS-DEBRUNNER § 253; BAUER's German-Greek N.T. Dictionary, 997 f., s.v. δ, II, 1, a, α.

out the arrest as being sent or authorized by the Sanhedrin, but give no details of its composition, John distinguishes two groups: first, the court or police officials sent out to Gethsemane directly from the meeting place of the Sanhedrin (ἐκ, John 18:3b); and second, the Temple guard, commanded by the Temple colonel, which was brought to Gethsemane from its station (in the Temple), also by order of the Sanhedrin (cf. 18:3a).<sup>50</sup> Besides these two groups, there was the slave Malchus,<sup>51</sup> who was a personal servant of the high priest (Mark 14:47; John 18:10), and was not present in an official capacity but doubtless had the task of bringing news of the action straight back to the high priest Caiphas, particularly as Jesus was to be taken first to Annas, not to Caiphas.

There is no doubt about the actual legality of the arrest. The bodies of men who carried it out were in the service of the Sanhedrin, the highest native Jewish authority, with whose knowledge and at whose wish they acted. If a written warrant for arrest was required by law (cf. Acts 9:2), it may be assumed, despite the silence of our texts, that such a warrant was in fact made out and handed to one of the leaders, one of the police or the commander of the Temple militia. A non-Roman citizen, suspected of a crime, could be arrested by the Jewish authorities in virtue

<sup>50</sup> Mark 14:43 is to be compared with this: The preposition *παρά* here signifies the originator or giver of the order (as in Mark 12:11; John 1:6; see BAUER'S Dictionary, 1109 s.v. *παρά*, I, 2). The preposition is very suitable: To be sure, all the units of the *ἄχλος* have not been sent out *directly* by the Sanhedrin, but the whole *ἄχλος* is acting at its orders. By use of the preposition *ἀπό*, which doubtless has a purely local meaning, Matthew has blotted out this fine shade of meaning (26:47).

<sup>51</sup> With his "relative" who was likewise a slave of the high priest (John 18:26). The other "slaves" mentioned in John 18:18, 26 are as unlikely to have been present at the arrest as the slave girl in 18:17. The name Malchus was very common among the Nabathæans and in Syria, as we know from inscriptions and above all from Josephus (see *Index* in NIESE s.v. *Μάλχος*). Hence, the man could have been a Nabathæan Arab or a Syrian, but he definitely was not a Jewish dignitary. PICKL (*op. cit.*, p. 91) actually makes out that he was the officer of the Temple. But the holder of the second highest office could assuredly never have been described as "the servant" of the high priest. We shall learn below (p. 94) the probable name of the Temple officer of the time. The use of the article, *the* servant (John 18:10) is doubtless to be explained by the fact that the writer assumes in his reader some prior knowledge of the story.

of the autonomous police powers which they had even under the procurator. In the Roman provinces, the enforcement of the civil, and also, to a large degree, of the criminal law among the native populations (*peregrini*) was normally left to the native authorities.<sup>52</sup> The assertion that only the procurator had the right to arrest a person believed guilty of a capital crime,<sup>53</sup> in the provinces of the Empire, lacks all support. Furthermore, there is nothing to indicate that the normal rules of Jewish criminal law were infringed by the arrest of Jesus; neither the fact that the arrest was carried out at night,<sup>54</sup> nor that the men were armed, can be so interpreted. Moreover, the fact that they were armed with sticks as well as swords does not by any means permit the conclusion that there were unauthorized members of the public among them; actually Pilate's soldiers once quelled a riot with this weapon alone.<sup>55</sup> If Peter's attempt at resistance did not cause him to be pursued, this does not necessarily prove bad conscience on the part of those making the arrest, i.e., because of the illegality of their

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<sup>52</sup> See BICKERMANN, *op. cit.*, pp. 172-174; O. HIRSCHFELD, *Kleine Schriften* (1913), pp. 593 ff. Arrests by the Jewish authorities without participation, either explicitly mentioned or assumed, of the Romans, are referred to in Acts 4:1-3 (5:18-24); 5:26 f.; 6:12; 8:3; 9:2; (12:1-5, Agrippa); 26:10. Imprisonment of criminals by the Jewish court is mentioned in Josephus *Jewish War* ii. 14. 1. § 273. Cf. H. WEYL, *Die jüdischen Strafgesetze bei Josephus* (Diss., Berne, 1900), p. 13.

<sup>53</sup> ROSADI, *op. cit.*, pp. 97-101. Cf. p. 122: "Making arrests is a matter for the imperial authorities, not for the judicature. No authority which merely has the right of jurisdiction can arrest an accused person directly; this has to be ordered by the official responsible to the imperial authorities." For the contrary view, see REGNAULT, *op. cit.*, p. 93; BICKERMANN, *op. cit.*, 172 ff.; WENGER, *op. cit.*, p. 537, n. 16: "That the warrant for arrest was issued by the Sanhedrin is in keeping with Roman Law, which authorizes the local authorities to do it."

<sup>54</sup> CHANDLER, *op. cit.*, I, 226 f., and BUNCH *op. cit.*, pp. 45 f., maintain, on the basis of *Mishna Sanh.* IV 1 h, that arrests by night were prohibited, but such a prohibition is not referred to either directly or indirectly in the text in question ("Capital matters are concluded on the same day in case of acquittal but only on the following day in case of a sentence of guilty"). The assertion that the arrest of Jesus was also illegal because the Sanhedrin had made use of an informer, contrary to Lev. 19:16-18, is equally unfounded (CHANDLER, *op. cit.*, pp. 228 f.; BUNCH, *op. cit.*, p. 46; ROSADI, *op. cit.*, pp. 102 f.).

<sup>55</sup> Josephus *Antiquities* xviii. 3. 2. § 61; *Jewish War* ii. 9. 4. § 176; cf. also n. 36 above.

action.<sup>56</sup> The apostle had simply succeeded in getting away, and the trifling incident caused by him could well be let drop when they had the leader of the whole movement in their hands; it was obviously for the same reason that they did not bother Lazarus further either (despite John 12:10 f.). Finally, Jesus Himself protests in a certain sense against the arrest, it is true. He does not, however, characterize it as illegal, but only as paradoxical: "As against a robber"<sup>57</sup> you have come out, with swords and clubs, to seize me. I was daily with you in the Temple teaching, and you did not lay hands on me" (Mark 14:48 f.).

#### EXCURSUS I

### *The Date of the Trial of Jesus*

NEITHER the New Testament nor the early Christian authors give any definite and reliable indication of the year and day of the death of Jesus. Since the second century, scholars have been trying, on the basis of the few chronological details given in the New Testament, and of various other sources—recently also with the help of astronomy—to reckon back at last to the date of that most momentous event in world history. In view of the scantiness and vagueness of the biblical data, it is not surprising that the findings of the experts still differ very widely. By far the greatest number of experts, such as U. HOLZMEISTER, R. HANDMANN, Fr. PRAT, J. LEBRETON, J. LEVIE, J. M. BOVER, E. MANGENOT, E. JACQUIER, J. M. PFÄTTISCH, L. SEMLER, F. M. BRAUN, J. SCHAUMBERGER, J. VAN BEBBER, J. BELSER, C. MOMMERT, K. A. H. KELLNER, A. WIKENHAUSER, A. MANASERO, J. CANTINAT, H. DANIEL-ROPS, E. SCHÜRER, P. W. SCHMIDT, H.

<sup>56</sup> ROSADI, *op. cit.*, p. 101: "If Simon Peter had really resisted a legal and authorized order, his resistance would apparently not have gone unpunished."

<sup>57</sup> That *λησστής* means "robber" here and not a "fighter for freedom" is clear from the context: 1. In v. 49, Jesus says in effect that a person who places himself daily in the eyes of all in the Temple surely cannot be a *λησστής*. This means that a characteristic of the latter is that he pursues an activity which shuns the light of day. But this applies far more truly to the real robber than to the fighter for freedom who in those days had the support of large sections of the population. 2. If we translate the word as "fighter for freedom" Jesus' reproach loses much of its bitterness. Jesus points to the shameful and humiliating fact of being treated as a common criminal. To be a fighter for freedom, on the other hand, would be nowise ignominious according to the views of the time; cf. A. SCHLATTER, *Geschichte Israels* (3rd ed., 1925), p. 322.

ACHELIS, P. ENDEMANN, O. HOLTZMANN, E. PREUSCHEN, Th. ZAHN, P. FEINE, O. GERHARDT, C. SCHNEIDER, M. DIBELIUS, J. JEREMIAS, R. VON MAYR, Fr. DOERR, C. H. KRAELING, A. T. OLNSTEAD, have declared themselves for the year 30 A.D. (= 783 A.U.C.). But next to the year 30, the year 33 is, in particular, frequently suggested, for instance by E. RENAN, J. BACH, W. HOMANNER, P. KREYHER, R. HENNIG, E. POWER, J. K. FOTHERINGHAM, J. M. VAN DER VEN, B. W. BACON, R. W. HUSBAND, P. LADEUZE, J. BEAUFAYS, A. C. HEADLAM, Fr. WESTBERG, R. BESNIER, A. C. DOYLE, P. GAECHTER, L. GIRARD, G. OGG, and with particular zeal by Baron Gustav Bedeus von SCHARBERG, who has been trying to win recognition for this view since 1928 in a series of publications in connection with the reform of the calendar sponsored by the then-existing League of Nations. There are also scholars who favor the year 31 (A. WESTPHAL, M. A. POWER), or 32 (E. STAUFFER), and some the year 29 (A. W. ZUMPT, A. LOISY, G. ROSADI, E. DITTRICH, G. MACKINLAY, E. MASINI, R. G. VILLOSLADA, C. ROMANO, D. LAZZARATO, DROSSAART BENTFORT), while some few advocate the year 27 (E. MEYER) or 28 (G. HÖLSCHER, C. G. KING), not to mention quite eccentric reckonings (such as J. STEWARD: 24; Robert EISLER: 21; E. MIREAUX: 36). This wide divergence of views suffices in itself to show that an absolutely certain answer cannot be given. But if one weighs all possible data and clues carefully, one comes to the conclusion that the seventh of April of the year 30 A.D. as the date of Good Friday has a high degree of probability. The evidence in its favor is briefly as follows:

I. In what year did Jesus begin His public ministry? With the help of Luke 3:1 and John 2: 20 a fairly exact answer can be given.

1. According to Luke 3:1, John the Baptist emerged in the fifteenth year of the reign of Tiberius Cæsar. The Emperor Augustus died on the nineteenth of August, 14 A.D. The fifteenth year of the reign of his successor Tiberius would therefore be from August, 28 to August, 29 A.D. This method of reckoning, in itself the most obvious, has been rejected, however, by more recent scholars. Conrad CICHORIUS (ZNW, 22 [1923], 17-20) has pointed out that according to the Syrian chronology, which was also adopted by the Jews of Palestine, and may be assumed to have been used—particularly by Syrian-born Luke—the first year of a ruler's reign was reckoned from the date of his accession to the next New Year festival. As the Syrian New Year was celebrated on October first, according to this chronology, the first year of the reign of Tiberius would fall between August nineteenth and September thirtieth of the year 14 A.D., and the fifteenth year between October first of the year 27 and September thirtieth of the year 28. Hence, the emergence of the Baptist falls between these two dates. His career must have been comparatively short (cf. Cardinal Th. INNITZER, *Johannes der Täufer* [1908], p. 167). Obviously, in 3:1 f., Luke wishes to indicate the date not only of the emergence of the Baptist but also of the first appearance of Jesus Himself. For, he does not give any special further date for the beginning of the

ministry of Jesus, but confines himself to indicating His approximate age at the time (3:13). The imprisonment of John the Baptist and the beginning of the public ministry of Jesus which immediately followed, must therefore have taken place soon after the autumn of 27/28, that is to say, probably the beginning of 28, or at least the beginning of 29 A.D.

2. According to John 2:20, at the first Passover of the public life of Jesus, the Jews make the remark that the Temple was already in course of construction forty-six years. Now we know from Josephus (*Antiquities* xv. 11. 1. § 380), that Herod had decided to commence rebuilding the Temple in the eighteenth year of his reign. The eighteenth year of Herod's reign was the year 20/19 B.C. (W. OTTO, *Herodes* [1913], p. 83). As various preparations preceded the actual start of building, the year 19 is probably the more correct date to reckon from (=735 A.U.C.). The biblical scene occurring forty-six years later therefore took place in the Passover of the year 28 A.D. (=781 A.U.C.).

II. How long did the public life of Jesus last? Since the beginning of our century this question has been the subject of numerous investigations. Four views have been represented—the one-, the two-, the three-, and the four-year theories.

The one-year theory, of which the principal exponents have been VAN BEBBER and BELSER, subsequently also FENDT, BONKAMP, VEZIN, CLADDER and MADER, can be regarded today as finally refuted. The most thorough refutation was the work of V. HARTL, *Die Hypothese einer einjährigen Wirksamkeit Jesu kritisch geprüft* (1917). The fact that the public ministry of Jesus covered at least two years emerges from the Gospel of St. John, which distinguishes three feasts of Passover as falling during the ministry of Jesus: 2:13 (the Nicodemus Passover); 6:4 (the Multiplication of the Loaves Passover), and 11:55 (the Passion Passover).

The four-year theory, represented by E. STAUFFER, (*Geschichte Jesu* ["Historia mundi," IV], [1956], 130 f.), adds to these three feasts of Passover two more deduced from John 1:29-41 ff. and 4:35-5: 1; but his conclusion is not convincing.

Decision between the three- or the two-year theory depends upon whether the feast mentioned, but not specified, in John 5:1 is taken to be the Passover or not. The majority of exegetes question the validity of adding this unnamed feast to the three Passovers mentioned above. They take it to be either another feast occurring in the second year of the ministry or the Passover mentioned in 6:4. The arguments in favor of the latter interpretation usually assume that chapters 5 and 6 of St. John's Gospel were disarranged in transmission (MEINERTZ, LAGRANGE, DURAND, PRAT, SUTCLIFFE, WIKENHAUSER, BULTMANN), a view which certainly can be supported with some reasons.

At any rate, the facts of the case are as follows: That the ministry of Jesus lasted at least two years can be proved; but it cannot be proved, on the other hand, that it lasted three years. One must therefore give the preference to the two-year theory, which is upheld, moreover, by one of the

most recent examinations of this problem (E. F. SUTCLIFFE, *A Two-Year Public Ministry* [1938]). The three-year theory comes next, only as a possibility, however. Thus, the ministry of Jesus lasted two (or three) years and some months.

One arrives at the year of the death of Jesus by adding this period to the year when Jesus emerged into public. As we have ascertained two points of time for the latter event, two possibilities are present:

Calculation according to I., 1.:  $28 (29) + 2 (3) = 30$  (to 32)

Calculation according to I., 2.:  $28 + 2 (3) = 30$  (31)

Hence, everything points to the year 30 as the year of the death of Jesus. The year 31 must be left open, it is true, but it is definitely less probable. To accept the year 32 involves rejecting the chronology based on John 2:20, and this could hardly be justified.

III. Did the first Good Friday fall on the fifteenth or on the fourteenth Nisan? All the evangelists agree that the day Jesus died was a Friday. In the date of the month, however, they differ. According to the synoptics, Jesus ate the paschal meal on the Thursday evening (Mark 14:12-16). The Law required this meal to be held on the evening of the fourteenth Nisan, that is to say, the beginning of the fifteenth Nisan. According to this, the day of Jesus' death would be the first day of Passover, the fifteenth Nisan. But according to John, Jesus was crucified on the *same* day, on the evening of which the Jews celebrated the paschal meal (John 18:28), that is to say, on the fourteenth Nisan (likewise the Gospel of Peter 2:5). This notorious divergence has already set many learned pens in motion, but among the numerous and, in many cases, uncommonly ingenious efforts at reconciling the difference (cf. for example, BILLERBECK, II, 847-853) there is not a single really satisfying one. In the present state of research, there is no choice but to decide for one of these two views. Some scholars give the synoptic dating the preference. They assume that the Fourth Evangelist placed the crucifixion on the fourteenth Nisan in order to give expression to the idea which moved him strongly, namely, that Jesus was sacrificed as the true Paschal Lamb (cf. 1 Cor. 5:7); for the paschal lambs were slaughtered in the Temple on the afternoon of the fourteenth Nisan. That the evangelist was acquainted with this idea emerges, it is said, from 19:36, in which he quotes the words of Scripture, "Not a bone of Him shall you break." One can recognize in this a free paraphrase of the text relating to the paschal lamb, Ex. 12:46. It is sometimes assumed, moreover, that anti-Jewish bias may have caused the evangelist to suppress the paschal character of Jesus' last meal. Against this depreciation of the witness of John one can argue that the symbolic interpretation of the crucifixion in John, as mentioned above, does not seem sufficiently pronounced to be the theological motive for what, after all, is a radical change of the chronology. Besides, it is by no means certain that in 19:36 John had the paschal lamb text, Ex. 12:46, in mind. Actually, in its form the Johannine text has rather more resemblance to Ps. 33:21, a text which does not refer to the paschal lamb at all. Moreover, coupled with this one quotation from the Old

Testament there is another (from Zach. 12:10) which has not the slightest relation to the paschal lamb theme. Now, both texts must surely serve the same idea, and the only idea that is applicable, as such, is the thought that God's plan of salvation has been fulfilled in the crucifixion of Jesus, and that the Crucified has thereby been proved to be the Messiah. For these and other reasons even those scholars who elsewhere prefer the synoptics to John on principle (for instance M. DIBELIUS, *Jesus* [1939], p. 110; F. BÜCHSEL, *Jesus* [1949], pp. 105 f.; Ed. MEYER, I, 196 f.; K. L. SCHMIDT, RGG [2nd ed.], III, 124; E. PREUSCHEN, ZNW, 5 [1904], 14-17; Fr. LOOFS, *Wer war Jesus Christus?* [1916], p. 117; and others) reject the above-mentioned judgment on the Johannine text.

Against the synoptics' account it is argued, among other things: That it is difficult to believe that the events of Good Friday, particularly the trial and execution, took place on the first day of the Passover (cf. particularly H. L. STRACK, *Der Mischnatraktat Passafest* [1911], p. 8\*). The execution itself would not be impossible; executions on feast days are actually provided for in Jewish law (J. JEREMIAS, *Die Abendmahlsworte Jesu* [2nd ed., 1949], p. 44), and, besides, Jesus was crucified by Roman soldiers. But that it should be permissible for the Sanhedrin to hold a legal trial, and one moreover relating to a capital charge, on the feast of Passover—all evidence that this could be so seems lacking. Further, it is believed that the Johannine chronology is also discernible in an interpolated fragment of the passion story in Mark, namely, 14:1-2. Here it is stated that the members of the Sanhedrin two days before the feast decided upon the arrest and execution of Jesus, but in doing so emphatically announced their intention not, on any account, to take this action on the feast itself. As Mark, in the further course of the story of the passion, nowhere explains *expressis verbis* why this program was upset, two different traditions appear to be recorded by him side by side, unrelated the one to the other. The main difficulty of this solution lies in Mark 14:12-16, that is to say, in the report of the preparation for the Last Supper, in which this meal is unambiguously described as the paschal meal. The argument that it is Mark's purpose in this passage to make the last meal of Jesus into a paschal meal and so establish the connection between Old Testament custom and Christian Sacrament (DIBELIUS, BÜCHSEL) will not be clear to everyone.

Whichever way one may decide, there still remains some difficulty which one must put up with. Perhaps the decision must be in favor of the johannine dating, after all. Let us refer here to two Jewish traditions of which one has been seldom, and the other apparently never before, referred to in this connection. In a *baraita* of the Babylonian Talmud, the execution of Jesus is placed definitely without doubt on the eve of the Passover (Sanhedrin 43 a: see *above*, pp. 23 ff.). That this second-century document is tendentious, biased, and unreliable in its other particulars has already been established; but in the remark concerning the day of execution one seeks in vain for any bias. The second Jewish source referred to is a passage in the Mishna tractate *Pesachim* VIII 6 a. This text bears testimony to the

custom of the Passover amnesty mentioned in the gospel story of the passion (cf. *below*, Excursus X), but makes it clear that the prisoners were freed *before* the evening of the paschal meal, i.e., on the fourteenth of Nisan. Only John's narrative, which makes the day of the amnesty the fourteenth of Nisan, tallies with this. Moreover, this date already emerges from the amnesty custom as such, which is testified to by all the evangelists; for the freeing "for the feast" would have no meaning if it only happened when the feast was already half-way over. Only if those freed had been able to join in the celebration of the Passover, that is to say, if they were already free on the fourteenth of Nisan, is the custom historically comprehensible.

Although the synoptic dating still remains a problem, it would appear justifiable to give the preference to John's dating as being the more probable historically, and backed by non-Christian traditions, and to accept the fourteenth of Nisan as the day of Jesus' death.

IV. When did the fourteenth of Nisan fall on a Friday? It is the task of astronomical science to ascertain this, but it does not seem to have come to any definite results as yet. According to the New Moon Tables of the Berlin Astronomical Calculation Institute (see *Bibl*, 9 [1928], 55) the fourteenth of Nisan fell twice on a Friday in the years 28 to 34; namely, in the year 30 on the seventh of April, and in the year 33 on the third of April. In the year 30, to which the chronological data of the gospels point as the year of the death of Jesus, the astronomical conditions to be assumed for Good Friday were actually present. Hence, the placing of the trial of Jesus in that year may be granted to have a degree of probability such as is seldom to be met with in chronological questions of this kind. The year 33, on the other hand, while likewise corresponding in astronomical conditions, proves to be as good as impossible in view of the chronology of the life of Jesus (see *above*, II, pp. 74 f.).

In view of the fact that the dating of the synoptics necessarily remains unexplained, let us enquire whether the fifteenth of Nisan also fell on a Friday in one of those years. It transpires from SCHÖCH's Table that this was the case only once from the years 28 to 34, namely, on the twenty-third of April of the year 34. That year is quite out of the question, however, because it is much too late. Hence, astronomical research too appears to verify the Johannine, but not the synoptic, dating of Good Friday. It is not quite impossible that the fifteenth of Nisan was celebrated on a Friday in the year 31. Astronomically the fifteenth of Nisan of that year falls on a Thursday, it is true; but if the new moon was only poorly visible, the month could have begun a day later; SCHÖCH dismisses this feeble possibility, however, because he believes he can prove that in that year the Nisan new moon was very easy to see in Jerusalem (see *Bibl*, 9 [1928], pp. 53 f.).

Admittedly, SCHÖCH's astronomical calculations have not escaped contradiction. According to J. JEREMIAS (*Die Abendmahlsworte Jesu* [2nd ed., 1949], p. 17), astronomical experts ascertained, after SCHÖCH's death, that

in the year 30 the fifteenth and not the fourteenth of Nisan fell on a Friday, and that this may also have been the case in the year 31. This opinion of astronomical experts may not be wholly reliable, however; JEREMIAS names no publication in which these assertions were enlarged upon and justified. Moreover, more recent investigations founded upon astronomy come to conclusions which differ in part from those of the experts on whom JEREMIAS relies. Grace AMADON, for instance, in a study of the Jewish Calendar (JBL [1942], pp. 227-280) believes she can demonstrate that the fourteenth of Nisan of the year 31 fell on a Friday and not, as JEREMIAS thinks, on a Thursday. Therefore, it might be advisable to await a detailed and universally acceptable astronomical verdict on SCHOCH's findings.

Now, the purely astronomical calculation is uncertain enough, but the reconstruction of a definite Jewish calendar is fraught with special factors of uncertainty over and above, as J. SICKENBERGER in particular has pointed out emphatically (cf. LThK, II, 331). For in such reconstructions it is assumed that the Jews regulated their calendar with astronomical exactitude. This assumption is not wholly correct. For in the first place the new moon was observed with the naked eye. Hence, in bad weather the new light could be overlooked and the beginning of the month fixed a day too late. In the second place, the Jewish authorities were justified in inserting an intercalary month before the Nisan if this seemed indicated by special agricultural or road conditions (for instance, if the barley used in the offering of sheaves in the Temple on the sixteenth of Nisan was not yet ripe; or if the very bad state of the roads would make a Passover pilgrimage impossible for the inhabitants of some districts). The fact that the Jewish calendar deviated in practice from the astronomical calendar from time to time is, of course, no reason in itself for denying the value of such calculations. True, astronomical calculations alone allow of no sure conclusions, but they can be of value in certain circumstances in confirming results arrived at by other means. Hence, in our case, if SCHOCH's calculations are right, the chronological references of the New Testament make it appear probable that Jesus died on a Friday of the year 30, presumably on a fourteenth of Nisan. According to SCHOCH the fourteenth of Nisan actually did fall on a Friday in the year 30 in the normal course (i.e., if the Jewish calendar authorities regulated the calendar exactly on astronomical lines then). In that case, the day that Jesus died was the seventh of April of the year 30; but this date can only be accepted with reserve, as its astronomical basis is not entirely beyond doubt.

Hence, we find that the trial and crucifixion of Jesus very probably took place in the year 30, and presumably on the fourteenth of Nisan. Possibly this day was the seventh of April of the year 30.

V. Whereas, up till now, it was the general opinion that Jesus was arrested on Thursday night and crucified on Friday, Mlle. Annie JAUBERT (*La date de la Cène* [1957]) has lately asserted the thesis that the arrest

had already taken place during the night between Tuesday and Wednesday. For this so-called "chronology of three days," the following arguments are proposed: As can be inferred from the Book of Jubilees, the Book of Enoch, the Damascus Document, and some Qûmran texts of cave number one, and as can definitely be proved by the calendar fragments of cave number four, at the time of Jesus there was, besides the official lunar calendar, a solar calendar which the sect of Qûmran and similar circles followed and according to which the Passover always fell on a Wednesday. Jesus, too, must have observed this calendar; for in this way only can the divergence between the synoptics and St. John regarding the day of Jesus' death be resolved. When the synoptics characterize the Last Supper as a paschal meal, they are right. Jesus did in fact celebrate a paschal meal before His death, i.e., according to the Qûmran calendar, on Tuesday evening (in the Jewish reckoning, this would be at the beginning of Wednesday). When, on the other hand, St. John reports that Jesus was crucified on the day before the Passover, he is also right; for he computes according to the official calendar which placed the first Good Friday on the fourteenth of Nisan. In several early Christian writings (*Didascalia* 21; Epiphanius; Victorinus of Pettau), it is explicitly affirmed that Jesus was arrested on Tuesday night, accused before the Sanhedrin on Wednesday and Thursday, before Pilate on Thursday and Friday, and then crucified. Interpreted according to this chronology, the gospels lose some of the difficulties with which they have been burdened till now. JAUBERT's surprising thesis has thus far received resounding plaudits. Among others, the following have expressed approval: E. VOGT, "Dies ultimæ cænæ Domini," *Bibl*, 36 (1955), 408-413; B. SCHWANK, "War das Letzte Abendmahl am Dienstag in der Karwoche?" *BM*, 33 (1957), 268-178; J. DANÉLOU, *The Dead Sea Scrolls and Primitive Christianity* (1958), pp. 26 f.; E. RUCKSTUHL, "Die Chronologie des Letzten Mahles und des Leidens Jesu," *Schweizer Kirchenzeitung*, 126 (1958), 185-187; 200-202; 211 f.; 225-227; J. A. WALTHER, "The Chronology of Passion Week," *JBL*, 77 (1958), 116-122. Some hesitation has been expressed by L. JOHNSTON, "The Date of the Last Supper," *Scripture*, 9 (1957), 108-115; J. LEAL, "La nueva fecha de la Cena y el orden de los hechos de la Pasión de Nuestro Señor," *EE*, 31 (1957), 173-188; J. A. O'FLYNN, "The Date of the Last Supper," *ITQ*, 25 (1958), 58-63; P. W. SKEHAN, "The Date of the Last Supper," *CBQ*, 20 (1958), 192-199. It must be admitted that the new hypothesis deserves serious consideration. But one who carefully examines all the pros and cons will reach the conclusion that the traditional chronology of the passion is decidedly more justified. The chronology of the three days attested by the *Didascalia* has its origin in the second century at the earliest, and is the result of the efforts made later on to derive the traditional weekly fasts on Wednesday and Friday from the passion of our Lord. There is no doubt that both the synoptic gospels and the Gospel of St. John testify to the chronology of one day. Inasmuch as the passion of our Lord, contrary to other parts of the gospels, was from the

very beginning handed down as one continuous report, the chronology of the passion, preserved in the gospels, must not be lightly rejected. The statement, that the chronology of the three days removes a number of difficulties in the interpretation, when carefully considered, proves to be wrong or doubtful. For a more detailed treatment, see J. BLINZLER, "Qumrankalender und Passionschronologie," ZNW, 49 (1958), 238-251.

#### 4. THE PRELIMINARY EXAMINATION

JESUS was bound and led back into the town from the Mount of Olives. He was not brought straight before the Sanhedrin, however, but as John alone reports (18:12 f., 19-24), first before the high priest Annas. If the words "to Annas" mean "to the house of Annas" and if the traditional location of the house of Annas is correct, then Jesus was brought back more or less by the same way that He had come to Gethsemane; for, from ancient times, tradition places the house of Annas south of the town very near the Cœnaculum. A tradition reaching back to the thirteenth century transfers it to the spot north of the Sion Gate where the Angels' Chapel of the Armenian Olive-Tree Monastery, Der ez-Zêtuni, stands today. But still more often one encounters the tradition that Annas lived either permanently or at times, in a wing of the palace of Caiphas. Even in the time of the Pilgrims of Bordeaux (333 A.D.), the site of this latter building was believed to be somewhat farther south, between the Sion Gate and the Dormitio Church, near the Cœnaculum.<sup>1</sup>

Twice again Annas, son of Seth, is mentioned in the New Testament as high priest, beside the name of Caiphas.<sup>2</sup> He appears in the writings of Josephus, who calls him Ananos, as one of the most powerful personalities among the priestly aristocracy of the

<sup>1</sup> The thesis of the Assumptionists, who place the house of Caiphas in St. Peter's in Gallicantu, on the eastern slope of the Sion of today, has found less approval up to the present. Cf. A. E. MADER, LThK, V, 318 and C. KOPP, *Grabungen und Forschungen im Heiligen Land* (1939), pp. 128-130. According to Josephus *Jewish War* ii. 17. 6. § 426, the house of the later Annas was in the upper town, West Jerusalem.

<sup>2</sup> Luke 3:2; Acts 4:6; whether also 5:17 is questionable, cf. S. BERGER, *Un ancien texte latin des Actes retrouvé dans un manuscrit provenant de Perpignan* ("Notes et extraits des manuscrits," 35, part I; Paris, 1895), p. 194.

time.<sup>3</sup> He was entrusted with the office of high priest in the year 15. Moreover, he had the satisfaction of seeing all his five sons attain this high rank, beginning soon after his own deposition with Eleazar (c. 16-17 A.D.), then a good twenty years later Jonathan (Easter till Pentecost, 37), then Theophilus (37-?), Matthias (43-44) and finally Annas II (62), who had James the brother of the Lord stoned sometime during his three-months' reign. Because of this amazing record of power and honors, his contemporaries called Annas a lucky man. They had all the more reason to do so since still others of his clan later wore the high-priestly robe. One of the last of the high priests, Matthias, son of Theophilus (65-67), was a grandson of his, while Joseph Caiphas, the high priest from 18 to 37 A.D., was his son-in-law (John 18:13) and the high priest Jesus, son of Seë, the high priest inducted by Archelaus shortly before 6 A.D., presumably was his brother.<sup>4</sup> Jewish tradition contains many highly unfavorable judgments on the clan, the main charge against them being an addiction to intriguing, denouncing others, and making mischief.<sup>5</sup> No doubt, however, Annas owed his great and lasting success not alone to the fact that he was rich and used his riches without scruple to further

<sup>3</sup> *Antiquities* xx. 9. 1. § 198; xviii. 2. 1f. § 26, 34; cf. SCHÜRER, II, 204, 217, 221 f.; BILLERBECK, II, 568-571. In describing the walls at the Roman siege, Josephus mentions the tomb of the high priest "Ananos" (*Antiquities* v. 12. 2. § 506), no doubt our Annas; his son of the same name can hardly be meant, as he was not buried but thrown to the dogs and wild animals (*Jewish War* iv. 5. 2. § 316). Now, in the region south of the town which is the only one in question, a certain rock tomb has been found which is distinguished from the others by its richly ornamented forecourt and interior. G. DALMAN, *Jerusalem und sein Gelände* (1930), p. 389, identifies this tomb with the tomb of Annas mentioned by Josephus.

<sup>4</sup> Seë is obviously a corruption of Seth or Sethi, the name of the father of Annas, see G. HÖLSCHER, *Die Hohenpriesterliste bei Josephus und die evangelische Chronologie* (1940), pp. 12, 21 f.

<sup>5</sup> Documentation in BILLERBECK, II, 569-571. Using the data gleaned from the New Testament, from Josephus, and from rabbinical literature concerning the leading men of the house of Annas, P. GAECHTER in "The Hatred of the House of Annas," *TS*, 8 (1947), 3-34, draws an interesting and in many respects original picture of the development of the Church from the death of Jesus to the Fall of Jerusalem. He comes to the conclusion that every time a bloody persecution of the Christians broke out, a member of this family happened to be high priest (p. 34).

his ambitious schemes, but also to his uncommon energy and great gifts as a diplomatist. This explains the fact that he emerges prominently several times in the New Testament, although he had been deposed from office long before then. When he is referred to as high priest it must be remembered that deposed high priests also retained that title.<sup>6</sup>

Annas alone examined Jesus, but in the presence of servants and, possibly, of some other hierarchs. The Sanhedrin as a body only assembled later under the presidency of Caiphas.<sup>7</sup> It is not admissible to consider the scene as an official preliminary examination; obviously such an arrangement was unknown in Jewish criminal trials. Many historians of jurisprudence take it that Annas initiated this examination in virtue of his office as president of one of the two smaller courts, still existing at that time in Jerusalem, which were authorized to deal with less serious criminal affairs, but had then recognized the unusual importance of the case and passed it on to the Great Sanhedrin for that reason.<sup>8</sup> Yet that can hardly be correct, for it was the Sanhedrin and not a local court of lower status which had decided upon the arrest of Jesus and His legal prosecution on a capital charge; and as Annas himself was a member of the Sanhedrin he must have been aware already of the special importance of the case. Hence, the first hearing does not form part of the actual trial, but is of an unofficial character. The wording of John 18:13 seems to point to this too, as it is said in justification, as it were, of Jesus being brought before Annas: "For he was the father-in-law of Caiphas,

<sup>6</sup> J. JEREMIAS, *Jerusalem zur Zeit Jesu*, II B (1929), 14 f.; SCHÜRER II, 221 f. The hypothesis of M. VON ABERLE, TQ, 53 (1871), 13-15, that Annas had been deprived only of the spiritual part of his office by Valerius Gratus but still retained his secular power and the presidency of the Sanhedrin, is based upon a misinterpretation of *Antiquities* xviii. 2. 2. § 24, and is rightly rejected by most scholars.

<sup>7</sup> J. JEREMIAS writes in *Die Abendmahlsworte Jesu* (2nd ed., 1949), p. 44, n. 5: "It seems to me, as to Rudolf Bultmann, that in 18:19, John is describing an official hearing at which (cf. Mark 14:53) the Sanhedrin is present." But the presence of sanhedrists is not mentioned and the presence of the high priest Caiphas is definitely excluded in unmistakable words. See further in Excursus II.

<sup>8</sup> R. VON MAYR, *op. cit.*, pp. 292 f.; DOERR, *op. cit.*, p. 23.

who was the high priest that year." This would seem to mean that the reasons for this preliminary hearing were of a private rather than of a legal nature. In handing Jesus over to Annas for a time, Caiphas doubtless wished to publicly show his high regard for his father-in-law, and probably also really counted on the latter's experience and cunning to find material which would serve later in the trial before the Sanhedrin. In this way, the time until the formal meeting of the court was usefully filled in. In any case, the reason for the preliminary proceedings before Annas was not that the Jews regarded Annas, despite his deposition by the Romans, as the only legitimate high priest, or that Annas did not wish to take part in the sitting of the Sanhedrin as an ordinary member and could not act as president (Schegg), or that the intention was to save the old gentleman from having to go out of doors in the cold night air (Zahn).<sup>9</sup> John, in adding to his remark about Annas: "Now it was Caiphas who had given the counsel to the Jews that it was expedient that one man should die for the people" (18:14), obviously means to convey that both of them, the former and the ruling high priest, now consider that the time has come to put this principle into action and to take all necessary steps to put Jesus finally out of the way.

But this preliminary examination fails of its purpose. Annas questions the prisoner, whose fetters are removed during examination (cf. Acts 22:30), about His disciples and His teaching. He wishes to learn from Jesus' own lips why He has gathered a band of disciples round Him and what particular doctrines He represents. Though the teaching activities of Jesus on the whole outwardly corresponded to those customary among the rabbis, they were, nevertheless, not quite conventional and regular. He was not a professional scribe or rabbi. It was known that He had not gone through the prescribed course of studies or been authorized to teach by any governing body (John 7:15; Mark 6:2). His activity and still more His collecting of disciples must therefore have

<sup>9</sup> P. SCHEGG in *Wetzer und Welte's Kirchenlexikon*, I (2nd ed., 1882), 863 f.; Th. ZAHN, *Das Evangelium des Johannes* (1908), p. 613.

attracted attention, in fact, they must have seemed suspicious. Moreover, He differed radically from the ordinary teachers in that instead of discussing and passing on matter learned, He announced God's will afresh with an autocracy and authority even greater than that of the prophets of the Old Testament; and in doing so, showed a self-assertion and insistence on His own absolute authority which was quite incomprehensible and could only be regarded as blasphemous in the light of Jewish religious thought. Perhaps Annas was trying now to entice from Jesus a self-testimony of this kind, which would smooth the way for the coming Jewish trial. As he also showed interest in the disciples, who had been left unmolested at the arrest, it seems reasonable to assume that he wanted to lead Jesus into a declaration on the messianic movement enkindled by Him, which could then be exploited before the Roman forum. He believed or pretended to believe that Jesus had founded a sort of secret society with suspicious and peculiar doctrines and aims. ★

With quiet dignity Jesus rejects this imputation. He recalls the complete openness of His activity: "I have spoken openly to the world; I have always taught in the Synagogue and in the Temple, where all the Jews gather, and in secret I have said nothing. Why dost thou question me? Question those who have heard what I spoke to them; behold, these know what I have said" (John 18:20 f.). Now, John knew just as well as the synoptics did that Jesus also spoke at times to a limited circle of hearers. He will therefore have understood Jesus' statement that He had said nothing in secret to mean that the whole content of His messianic message was available to everyone, and that the idea of a secret conspiracy or the like was therefore absurd. The publicity of His preaching makes the questioning of Jesus, whose replies are only received with distrust in any case, entirely superfluous. Since there were plenty of people who had heard Him and were able to testify, the inquisitor should rely on them, as the evidence of witnesses is surely essential to any proper hearing. ★

Such a free and fearless tone was something quite unheard of

in Jewish courts. As Josephus relates (*Antiquities* xiv. 9. 4. § 172), plaintiffs in Jewish courts habitually adopted an attitude of utter servility. In word and gesture, their demeanor was one of exaggerated humility and fear; they appeared with disheveled hair and black clothing, and tried in every conceivable way to arouse the pity of their judges. To the inferior intelligence of a court-house henchman, Jesus' reply must therefore have seemed disrespectful and offensive. As he could feel safe from reprimand on the part of his employers, he struck the Accused on the cheek with ostentatious officiousness, saying: "Is that the way thou dost answer the high priest?"

Jesus endures this rude abuse, but not without calmly and definitely pointing out to the offender that he is wrong: "If I have spoken ill, bear witness to the evil; but if well, why dost thou strike me?" The high priest's reaction to the incident is not recorded. The examination is without result. Annas therefore has Jesus fettered once more, and sends Him to Caiphas, the reigning high priest (John 18:24).

From this brief scene, one can guess that the Accused can expect little justice, not to speak of mercy, from His judges. But it also shows that the adversaries are not well equipped with incriminating material. Will they succeed in producing at the actual trial a legal ground for the death sentence which they are determined to pass?

#### EXCURSUS II

#### *The Account of the Examination by Annas*

(John 18:12-14, 19-24)

IN THE accounts by the four evangelists of the cross-examination by Annas, there are three things which strike one particularly. Firstly, that John reports with such detail the, practically speaking, unimportant hearing by Annas, whereas he does not report anything at all of the decisive proceedings before Caiphas; secondly, that the story of Peter's denial is cut in two

by the report of the preliminary hearing (vv. 15-18, 25-27); thirdly, that the person examining Jesus is called "the high priest" in vv. 19-23, a title which would seem to refer to Caiphas rather than to Annas (cf. v. 13). Because of this the conclusion is often drawn that the original text, which told of the proceedings before Caiphas, had got mixed up. Actually, the Syrian Codex Sinaiticus shows an arrangement of verses which could support this contention. There, the brief remark that Jesus was sent to Annas and passed on by him to Caiphas is followed by the description of the trial by Caiphas, and this in turn by the uninterrupted story of Peter's denial. The order of the verses is therefore: 12, 13, 24, 14, 15, 19-23, 16-18, 25-27. Many exegetes, particularly French ones, have declared in favor of placing verse 24 directly after verse 13, an arrangement to which Cyril of Alexandria and the minuscule manuscript 225 also bear witness. But one can see from the text of the above-mentioned Syrian Codex Sinaiticus that the hand of a reviser has been busy on it. Some exegetes have suspected a disarrangement of pages and assumed that the passage 18:14-23 originally followed v. 24. Now, one must reckon with substitution of pages having taken place several times in John; but in the above-named case this hypothesis is not satisfying because it cannot explain how v. 24 got cut off from the v. 13. Finally, it has been suggested that the verb in v. 24 should be translated in the pluperfect tense ("Annas had sent Him to the high priest Caiphas"), but reasons of style militate against this. That the "high priest" holding the examination is Annas emerges from the comparison of v. 13 (they brought Jesus "to Annas") with v. 15 (the disciple "entered with Jesus into the courtyard of the high priest"), as well as from v. 24, according to which Jesus was sent by Annas to Caiphas after the examination had been concluded. The explanation of this expression on the part of the evangelist, which at first sight seems rather peculiar, is that since former high priests still retained the title "high priest" after having been deposed, John could call Annas also by that title. He could even speak of him as "*the* high priest" (vv. 15 ff.), as he had just before mentioned him by name (v. 13). Caiphas was indeed mentioned in the same sentence, and at the same time emphatically distinguished more definitely by the title of high priest, but the evangelist did not need to fear any confusion in view of the clear context (vv. 13 a; 15 a, c.). In the Acts of the Apostles, too, Annas is introduced as "the high priest," even though Caiphas, who is mentioned in the same sentence as likewise a member of the high priestly family, was definitely the only high priest functioning at the time. That John does not call Annas high priest in the two places where he names him by name (vv. 13, 24) is explained by the fact that Caiphas also is mentioned each time, and, moreover, with the addition of "the high priest," a title which certainly has more reason in his case than in that of Annas, since Caiphas was the ruling holder of that high office. It would have sounded rather ceremonious if the title had been given to two different persons in the same

sentence. In v. 13 the relative clause, "who was the high priest that year," could be an indication that Annas had held the office of high priest at another time. In 11:49, 51, the statement does not seem to have this tone, as it occurs in a participial and not in a relative clause there. The main argument against the efforts to show that the examination reported in verses 19-24 was before Caiphas is this: John would surely have been unlikely to report, so much more fully than the synoptics, that Jesus had first been brought before Annas, if he had not intended, in doing so, to relate some extra details. Besides, the fact that in the account of the examination, not a word is said of the presence of members of the Sanhedrin, of the hearing of witnesses, or of a verdict by the Jews against Jesus, points to Caiphas not being the high priest mentioned here.

John's account in its current traditional form will be found entirely intelligible if one bears in mind the literary peculiarities of the Fourth Evangelist. John can very well pass over the trial before Caiphas and the Sanhedrin, not only because the synoptics have already reported it in detail, but also, and indeed specially, because the Fourth Evangelist's readers, converts from paganism, would have been very little interested in a Jewish court trial, especially as they already knew from St. John's Gospel all about the messianic claim of Jesus, which formed the climax of that trial. Now, John knows, besides, of a short proceeding before the ex-high priest Annas which none of his predecessors had taken notice of. Despite its slightness of content, he includes it because it provides him with the framework, so to speak, for the story of Peter's denial which, in the absence of the account of the trial before Caiphas, would have had no place otherwise, yet should not be suppressed because the prophecy reported in 13:38 is fulfilled in it; perhaps also because the evangelist has something to add to it, namely, the episode of the unknown disciple, vv. 15-16. He breaks up the story of the denial by inserting the hearing before Annas into it in two parts, in order, thereby, to mark the lapse of time between the first denial and the two succeeding ones.

Once the evangelist's literary method is rightly represented several of the objections raised against the historicity of the passage are disposed of. Those who look on the narrative as an invention (W. BRANDT, *Die evangelische Geschichte und der Ursprung des Christentums* [1893], p. 122; O. PFLEIDERER, *Das Urchristentum*, II [2nd ed., 1902], 382; J. FINEGAN, *Die Überlieferung der Leidens und Auferstehungsgeschichte Jesu* [1934], pp. 44 f.; H. E. GOLDIN, *The Case of the Nazarene Reopened* [1948], p. 557; P. VAN PAASSEN, *Why Jesus Died* [1949], pp. 138, 148; and others) are compelled to believe that John invented without sense or purpose, for even the representatives of radical criticism admit that the piece "cannot be traced back to the theological motives peculiar to St. John's Gospel" (R. BULTMANN, *Das Evangelium des Johannes* [1941], p. 497). The Annas hearing cannot be the product of a literary development of the synoptic accounts

of the Sanhedrin trial because in matter and form it is independent of this latter, and John clearly distinguishes this preliminary hearing from the appearance before Caiphas which follows on it. The Jewish scholar Joseph KLAUSNER also regards the scene as "entirely possible" (*Jesus von Nazareth* [2nd ed., 1934], p. 471).

## 5. THE PROCEEDINGS BEFORE THE SANHEDRIN

IF ANNAS and his son-in-law resided in different wings of the same building,<sup>1</sup> as the gospel reports of Peter's denial seem to suggest they did,<sup>2</sup> it only took a few minutes to conduct Jesus to the court room. Whatever the reason may have been that the place where the court sat usually was not chosen,<sup>3</sup> the particulars given in the synoptic gospels leave hardly any room for doubt that Jesus was brought up for trial in the residence of Caiphas (Mark 14:53 f.), and moreover appeared before the Sanhedrin in one of the upstairs rooms (Mark 14:66).

At the beginning of the trial it was still night; the servants sitting about in the courtyard had a fire to warm them in the chilly night. On account of the imminence of the feast of Passover, speed was necessary. In any case, since Jewish criminal law normally had no such arrangement as detention on remand, it was usual to try persons immediately after arrest.

<sup>1</sup> Cf. K. GALLING, *Biblisches Reallexikon* (1937), pp. 270, 414 ("Paläste mit Binnenhof").

<sup>2</sup> The denial of Peter took place in the courtyard of the house of Caiphas according to the synoptics, but apparently in the courtyard of Annas according to John; cf. A. BRÜLL, "Jesus vor Annas," *Kath*, 79 (1899, I), 198-200; ZAHN, *op. cit.*, p. 618; G. DALMAN, *Orte und Wege Jesu* (2nd ed., 1922), p. 263; RICCIOTTI, *op. cit.*, 605; J. CANTINAT, "Jésus devant le Sanhédrin," *NRT*, 75 (1953), 303, n. 19. P. BENOIT thinks otherwise, "Jésus devant le Sanhédrin," *Ang*, 20 (1943), 164; cf. also RB, 60 (1953), 452; he assumes a confusion in Mark's narrative between the nocturnal hearing before Annas and the morning session of the Sanhedrin; in actual fact, he maintains, Jesus was brought only before Annas during the night, and early in the morning before the Sanhedrin, which met in its regular and official meeting place. But this judgment on Mark's narrative is hardly correct. See *below*, pp. 145-148.

<sup>3</sup> See Excursus III.

In the house of Caiphas "all the priests and the scribes and the elders" (Mark 14:53) were gathered, i.e., precisely the three categories of persons who, according to Josephus, made up the Greater Sanhedrin. The supreme Jewish court of law now occupied itself with Jesus. Besides the ruling high priest, who presided over it, it had seventy members.<sup>4</sup> Mark's indication that "all" the members of the Sanhedrin had assembled in the house of Caiphas, like similar popular figures of speech employed by the evangelist, need not necessarily be taken quite literally; at this unusual hour some few individuals may well have been absent. It is certain, however, that the session was a plenary one in the sense of forming a quorum; according to the Mishna the presence of twenty-three members sufficed for this.<sup>5</sup>

We would very much like to know more about the personalities of those who attended that historic session. Unfortunately, however, the evangelists let us down very badly in this respect, but their scanty information can be supplemented by some extra-biblical accounts and evidence.

The only participant in the sitting mentioned by name in the gospels is the high priest Caiphas. Joseph, surnamed Caiphas, as he is called in Josephus (*Antiquities* xviii. 2. 2. § 35; 18. 4. 3. § 95), must have been an able diplomat. He actually succeeded in remaining in power for nineteen years, from 18 to 37 A.D.—a record time not even closely approached by any other high priest during the whole century. The nearest to this term were Ananias with twelve, Annas with nine, and Theophilus with a good four years, but a bare four years was the average time in office of the last

<sup>4</sup> *Mishna Sanh.*, I 6. It cites Num. 11:16 for this, from which it is to be inferred that the old Sanhedrin of Jerusalem was also so composed. Some data in Josephus confirms this: After the fall of the legitimate Sanhedrin, the Zealots in Jerusalem set up a court consisting of 70 men (*Antiquities* iv. 5. 4. § 334 ff.); during the war Josephus himself set up an authority in Galilee consisting of 70 men (*Jewish War* ii. 20. 5. § 571); the colony of Babylonian Jews in Batanæa was led by 70 prominent men (*Jewish War* ii. 18. 6. § 482; *Vita* ii. § 56). According to *Tos. Sukka* 4 6, there were 71 stalls in the great synagogue at Alexandria for the Sanhedrin of that city.

<sup>5</sup> Cf. M. WOLFF, "De samenstelling en het karakter van het groote synedion te Jeruzalem voor het jaar 70 n. Chr.," *Theol. Tijdschr.*, 51 (1917), 299-320.

twenty-eight high priests in the 107 years from the beginning of Herod's reign to the destruction of the Temple.<sup>6</sup> The Roman procurators liked to have plenty of changes in this office because they exploited the appointment of a new holder of the office to obtain money gifts from the successful candidate. This disedifying fact is actually recorded in the Talmud (*Joma* 8b): "And as the candidate paid money in order to become high priest, they [the procurators] were in the habit of depriving the high priest of office every twelve months." Valerius Gratus, governor of Judea from 15 to 26 A.D., through whom Caiphas came into office, must also have been susceptible to bribery, for he left none of the three immediate predecessors of Caiphas in office longer than a year (*Antiquities* xviii. 2. 2. § 34 f.). Doubtless Caiphas must have spared him the trouble of this roundabout method of obtaining money by making changes. He definitely did not lack the necessary means to do so; the Talmud contains the rule that the high priest must excel the rest of the priesthood in riches.<sup>7</sup> It is no less remarkable that Caiphas succeeded in remaining in office also during the whole governorship of Pontius Pilate (26-36 A.D.), an official who—be it noted—is reproached by his contemporaries not only with brutality but also with venality.<sup>8</sup> It was only the fall of this Roman official which brought about the downfall of his favorite: Soon after Pilate had been dismissed from office by Vitellius, the Roman prefect of Syria, Caiphas had to relinquish office. To be sure, he only gave place to his brothers-in-law, so that the power remained, practically speaking, in the same hands. In the session of the Sanhedrin which came to the official decision to put Jesus to death, Caiphas showed how unscrupulously he was wont to act against anyone who could possibly endanger his position of power (John 11:50, 53). A person of this masterful nature could not be impressed by the poor carpenter's son of Nazareth, even if the latter stood high in the esteem of the common folk.

<sup>6</sup> See SCHÜRER, II, 216-220; J. JEREMIAS, *Jerusalem zur Zeit Jesu*, II B, (1920), 54 f.

<sup>7</sup> *Tos. Joma* I 6; cf. JEREMIAS, *op. cit.*, p. 59, n. 5.

<sup>8</sup> Philo *Leg. ad Caium* 38. § 302.

Precisely because He threatened to draw the masses away from the ruling caste, He had to be sacrificed to reasons of state as a Caiphas would understand these.

The council over which the high priest presided was made up of three groups: the high priests, the elders and the scribes. The first group, that of the high priests, consisted in the first place of former holders of the high priestly office. Of those who belonged to it at that date we already know Annas and his eldest son Eleazar. Apparently both the predecessor and the successor of the latter were also still alive at the time of Jesus. The predecessor of Eleazar in the office of high priest was Ishmael I, son of Phiabi, who was high priest from 15 to 16 A.D. He belonged to a family which lingered unpleasantly in the memory of the following generations because of the ruthlessness and violence of its rule.<sup>9</sup> Eleazar's successor was Simon, son of Kamithos, who was high priest from 17 to 18 A.D. He had won tragi-comic fame by being unable to officiate on the Day of Atonement, the most glorious day of a high priest's term, because he had been hit by the spittle of an Arab the evening before and had been ritually defiled thereby. As his brother had carried out the high-priestly functions of the Day of Atonement in his place, and as this deputizing lent him the character of a high priest, the latter was henceforth counted in the ranks of the high priests who had held office, and so both brothers had a seat and a voice in the Sanhedrin from then onward.<sup>10</sup> Besides these ex-high priests at least five other chief priests belonged to the group of the "high priests," namely the commander of the Temple Guard, the steward of the Temple, and the three Temple treasurers.<sup>11</sup> The most important of these high officials of public worship was the commander of the Temple Guard. It was his duty to assist the high priest at solemn public ceremonies; he was appointed the high priest's deputy a week before the Festival of Atonement, and he superintended the public

<sup>9</sup> *Pesachim* 57a; *Tos. Menachoth* XIII 21.

<sup>10</sup> For documentation, see JEREMIAS, *op. cit.*, p. 10, no. 3.

<sup>11</sup> See the detailed proof in JEREMIAS, *op. cit.*, pp. 17-40.

worship and the officiating clergy and was the supreme police authority in the Temple and its precincts. If we are not much mistaken, we can actually give the name of the holder of this office at the time. For it has been proved, namely, that the Temple commander was normally chosen from among the nearest relatives of the high priest in office. Moreover, we learn from the Palestinian Talmud that no one was appointed high priest who had not previously served as Temple commander.<sup>12</sup> Now, since the successor of Caiphas was actually his brother-in-law Jonathan, it can be taken as highly probable that this was the man who held the important post of Temple commander in the time of Jesus. An old version of Acts 4:6 confirms this assumption insofar as it gives the name of Jonathan to a very prominent member of the Sanhedrin. This son of Annas played a great role later in Jewish history. For instance, in the year 52 A.D. he led an important deputation to the governor, Ummidius Quadratus, and soon afterward presented a petition to the Roman emperor who, at his suggestion, transferred the government of Palestine to the procurator, Antonius Felix.<sup>13</sup> Jonathan, who may have been indirectly concerned in the arrest of Jesus, died by the daggers of assassins who, by an irony of fate, had been hired to murder him by that same Antonius Felix whom he had formerly patronized.<sup>14</sup> It is somewhat less safe to assume that Theophilus and Matthias, the other two sons of Annas who rose to the rank of high priest shortly afterward, already belonged to the Sanhedrin at the time of the trial of Jesus; it is possible that they were Temple treasurers then, and, as such, had seats and votes. But, in any case, the picture of this group of the Sanhedrin is already sufficiently distinct. These imperious, worldly and unscrupulous hierocrats could have no understanding for the mystery of the personality and message of Jesus.

<sup>12</sup> J. Joma 3, 41a 5. According to Josephus, *Jewish War* ii. 17. 2. § 409 f., Eleazar, son of the high priest Ananias, was the officer of the Temple at the outbreak of the Jewish War.

<sup>13</sup> *Jewish War* ii. 12. 5 f. § 240, 243; *Antiquities* xx. 8. 5. § 162-4.

<sup>14</sup> *Jewish War* ii. 13. 3. § 256; *Antiquities* xx. 8. 5. § 162-164.

The second group in the Sanhedrin, the elders, represented the most influential lay families in Jerusalem.<sup>15</sup> They would seem to have been mainly wealthy landowners. We know one of them by name, Joseph of Arimathea, who owned some land outside the town walls with a garden where, as everybody knows, he allowed the body of Jesus to be entombed. Whether this much respected councilor, who is described as a secret disciple of Jesus and who definitely did not agree to the death sentence on Him (Luke 23:51), absented himself completely from the trial or left before the verdict was given, we cannot say. Although nothing more is known about any others of this group of the Sanhedrin, we may assume that the lay aristocracy were no better, on the whole, than the priestly aristocracy. ★

Finally, the third group composing the Sanhedrin consisted of representatives of the scribes. While the high priest and elders were practically all Sadducees,<sup>16</sup> the Pharisee school of thought was represented in the governing circles by the scribes. The Pharisees had won their way into the Sanhedrin in 76 B.C. in the time of Queen Alexandra Salome, and despite some reverses prior to the death of Herod I, succeeded in making their influence felt more and more distinctly. As the Sanhedrin was not only the organ of government but also, and indeed primarily, the legal authority, and as legal decisions called for training in the Law, the leaders of the Pharisee party, being trained in theology and in the Law of Moses, inevitably made themselves more and more indispensable, even though the Sadducean priests and the lay aristocracy may also have had their scribes in the Sanhedrin. If the high priests and elders were the representatives of the plutocratic upper strata of society, the scribes were the lawyers of the middle classes from which most members of the Pharisee party sprang. In the time of Jesus, these must always have had a position of power little inferior to that of their Sadducean rivals in the Sanhedrin. Indeed, they exceeded the latter, if possible, in ★

<sup>15</sup> See JEREMIAS, *op. cit.*, pp. 88-100.

<sup>16</sup> Acts 23:6; 5:17; cf. JEREMIAS, *op. cit.*, pp. 101-114.

venomousness and fanaticism. A remark in the Gospel of St. John, obviously "based on his own sound personal knowledge of conditions in Jerusalem in the time of Jesus,"<sup>17</sup> is very illuminating. It is told that many members of the Sanhedrin believed in Jesus but, because of the Pharisees, did not profess their belief lest they should be excommunicated. The Pharisees had been the driving force in the very first attempts to arrest Jesus (John 7:32, 47). Since they looked down with immeasurable contempt upon the "accursed crowd, which does not know the law" (John 7:49), they would have had nothing but contempt also for the uneducated preacher from Nazareth and His followers, had His open fight against them and His growing success with the masses not turned their contempt into bitter hatred.

But among them, too, there were men in whom the feeling for truth and justice had not died. Nicodemus is known to us as one of these. This esteemed scribe and member of the Sanhedrin had once sought and found instruction from Jesus at night (John 3:1-31). Later, despite his fear, he had appealed to the consciences of his fellow Pharisees: "Does our Law judge a man unless it first give him a hearing, and know what he does?" And they had answered him brusquely: "Art thou also a Galilean? Search the Scriptures and see that out of Galilee arises no prophet" (John 7:50-52). Perhaps this man, who contributed so generously to ensure the worthy burial of the body of Jesus (John 19:39), is identical with the Nakdemon (= Nicodemus) ben Gorjon mentioned many times in Jewish writings. The latter was an esteemed Torah scholar and was one of the three immensely rich citizens of Jerusalem who came forward and offered to feed the whole town from their own supplies during the siege by Titus. When Nakdemon's riches had vanished to nothing after the fall of Jerusalem, the celebrated Jochanan ben Zakkai (d. about 80 A.D.) once watched Nakdemon's daughter searching for grains of corn in

<sup>17</sup> Fr. BÜCHSEL, *Das Evangelium nach Johannes* (4th ed., 1946), p. 137 on John 12: 42 f.

the street sweepings to ease her hunger.<sup>18</sup> As the Nakdemon of Jewish tradition is nowhere recorded to be a Christian, he can only be identical with the Nicodemus of St. John's Gospel if we assume that the latter's timidity had continued to prevent him from publicly confessing Christ. Apart from him, we know only one scribe of the Pharisee party who must have been a member of the Sanhedrin at that time. He is Gamaliel I, that celebrated teacher of the Law under whom young Saul of Tarsus studied, if not just then, certainly immediately afterward (Acts 22:3). Gamaliel, who is cited in the Mishna several times as a leading authority, appealed to his fellow members of the Sanhedrin to let the apostles go free when they were brought up before that body shortly after Pentecost. His argument was that if their work was only of man it would collapse of itself, but that if it was from God, it should not be opposed (Acts 5:34-39). We would very much like to know how this great scholar, who obviously was anxious that verdicts should be just, behaved at the trial of Jesus. If he had spoken up against the death sentence, surely Christian tradition would have recorded his action, as the Acts of the Apostles put on record his mediation for the apostles, and as St. John's Gospel preserved the words of Nicodemus. Whether Gamaliel took part in the condemnation of Jesus or not, he was an exceptional person within his party. ★

As for the outer framework of a Sanhedrin trial, we learn something of this from the Mishna, which probably reproduces old conditions in these external details. According to it, the members sat around in a semicircle on raised seats, in such a way that they all could see each other.<sup>19</sup> To the right and left of them stood two clerks of the court, who wrote minutes of all the arguments for and against the accused. In the center was a seat for the accused and the witnesses, and behind them in three rows, the pupils of the scribes sitting on the floor.<sup>20</sup> Only after the pleas for exonera-

<sup>18</sup> BILLERBECK, II, 412-419.

<sup>19</sup> *Mishna Sanh.* IV 3a; regarding sitting of the Sanhedrin, cf. Acts 6:15; 23:3.

<sup>20</sup> *Mishna Sanh.* IV 3b; IV 4.

tion of the accused had been put forward could the arguments for the prosecution be made. In capital trials the accused could be acquitted on the evidence of one single witness, whereas condemnation required the unanimous evidence of at least two witnesses.<sup>21</sup> Since this latter condition is already firmly anchored in the Old Testament,<sup>22</sup> it must surely have been observed in the trial of Jesus.

According to Mark's narrative, the proceedings against Jesus began with the taking of evidence: "Now the chief priests and all the Sanhedrin were seeking witness against Jesus, that they might put Him to death" (Mark 14:55). That a death sentence must be passed was certain, whereas the grounds on which it was to be passed were not certain. The fact that nothing is said of witnesses for the defense may be due to the scantiness of the gospel accounts which obviously were only concerned to give the main stages of the proceedings which led to the condemnation. But it is also possible that there were no witnesses for the defense, whether because they were not admitted at all or because no one dared to take the part of Jesus before His notorious persecutors, or because a suitable witness from among the followers of Jesus could not be found in time for this suddenly convened night hearing; for the disciples had, as we know, fled. It may be assumed that if the evangelists had known anything about evidence for the defense, they would not have let the opportunity pass in silence, as such evidence would have provided not merely an effective contrast to the final condemnation but also a welcome starting point for Christian apologetics. According to the apocryphal Acts of Pilate a good dozen laudatory witnesses turned up before the Roman tribunal. Apparently, therefore, only witnesses for the prosecution had their say. Whether this was a breach of the legal order has yet to be investigated.

In Jewish legal procedure, there was no official prosecutor. The witnesses served as prosecution. Despite its being nighttime, they

<sup>21</sup> *Mishna Sanh.* IV 1d.

<sup>22</sup> Deut. 17:6; 19:15; Num. 35:30; Josephus *Antiquities* iv. 8. 15. § 219.

were already standing ready. Like the sanhedrists, they may easily have been notified, as the arrest of Jesus was to be expected, at least from the previous evening. Many commentators have concluded from their prompt appearance that they had been coached or even bribed by the sanhedrists.<sup>23</sup> That would certainly be quite in keeping with the reputation of Caiphas and his colleagues, but it cannot be proved. On the other hand, the fact that the witnesses finally proved useless owing to lack of unanimity does not mean much either. This failure may have been due to an error in management. It must be remembered that the witnesses gave their evidence individually and verbally, in the presence of the judges and the accused, and that their respective depositions were valueless if they differed one from the other even in the most trivial detail.

First, a considerable number of witnesses for the prosecution were called and heard, but we know nothing of what they said except that they did not agree with each other and so invalidated themselves. Neither do we know what acts or words of Jesus this array of witnesses cited. We can well imagine that incidents such as the cleansing of the Temple, or the triumphal entry into Jerusalem, or the alleged breaches of the Sabbath or, finally, many of the messianic self-testimonies of Jesus were brought up, but as the sources give us nothing to go on, it is useless to indulge in idle conjecture about them.

After the first witnesses were dismissed as failures more came up (two according to Matthew),<sup>24</sup> and we have some information as to what these said. They declared: "We ourselves have heard him say, 'I will destroy this Temple built by hands, and after three days I will build another, not built by hands'" (Mark 14:58). Actually, Jesus did once say this or something like it. According to the Fourth Evangelist, who is the only one to recount it within the framework of the public life of Jesus, the words were as follows: "Destroy this temple, and in three days I

<sup>23</sup> Thus, recently R. GUTZWILLER, *Jesus der Messias* (1949), p. 319.

<sup>24</sup> Cf. J. A. KLEIST, "The Two False Witnesses," CBQ, 9 (1947), 321-323.

will raise it up" (John 2:19). These cryptic words, spoken within sight of the Temple of Jerusalem, were interpreted by His disciples after the Resurrection to refer to the temple of His body (John 2:21 f.). Naturally, the witnesses meant the words to be taken as an insolent threat against the national sanctuary of the Jews. If the statement of the witnesses and the words of Jesus in our present text of Mark and John respectively are verbatim reports, the accusers gave the words of Jesus a form which emphasized the threat still more: "I will destroy" instead of "Destroy."

This accusation was dangerous, as an episode from the life of Jeremias shows. When the great Old Testament prophet once foretold the destruction of the Temple he was haled before the royal court as a criminal worthy of death (Jer. 26:1-19). What made it more incriminating in the case of Jesus was that, at least according to the witnesses, or one of them, He not only spoke of a future catastrophe to the Temple but emphatically indicated Himself as the one who would bring it about. In the whole of the ancient world the destruction of places of worship was counted as one of the most serious crimes.<sup>25</sup> To the Jews especially, in view of the unique place which the Temple held in their religious life, the mere threat of violence against it would seem to them a crime deserving of the death penalty; a vindictive court could easily make it out to be a blasphemy (Lev. 24:16). If the verdict of guilty was given on account of this accusation, obviously it was an injustice; for whatever the original meaning of His words about the Temple may have been, during His public life Jesus quite definitely never had any intention of destroying the Temple building or permitting it to be destroyed. According to His own clear words, He expected the destruction of the city and the Temple to come to pass as judgment of God (Mark 13:1 f.). But the words about the Temple definitely did not form the reason for the final death sentence. Mark states emphatically that in this case also the eye-witnesses differed—in how far, it is not known—and so were rejected as valueless, and that the examination then

<sup>25</sup> JUSTER, I, 459 ff.

proceeded. If, despite this, some scholars choose to see the ground for the condemnation of Jesus in the alleged threat to the Temple,<sup>26</sup> they would have to ignore vv. 61b and 61 in Mark 14, which would be quite unjustifiable. And their reference to Mark 15:19, according to which Jesus, while hanging on the cross, is taunted with His words about the Temple, is not convincing, because this taunt would be understandable even if the words referred to had only played a minor role in the trial.<sup>27</sup>

The hearing of the witnesses did not bring the desired result. Therefore, the court changed over to questioning the accused Himself. Jesus was required to answer to the accusations brought against Him. If He confirmed them, or even one of them, the failure of the witnesses to agree will have been successfully countered and a firm basis for the condemnation provided.

The high priest himself, as president of the court, conducted the interrogation. He stood up, walked to the center of the court where the accused stood with the witnesses, and asked Him: "Dost thou make no answer to the things that these men prefer against thee?" But Jesus made no answer. He refused to give an explanation of His actions and His teachings before this obviously malicious cabal, knowing that it would only meet with unbelief and misunderstanding. His steadfast silence deprived the court of

<sup>26</sup> A. JÜLICHER, "Die Religion Jesu und die Anfänge des Christentums," *Kultur der Gegenwart* I, 4 (1906), 52; J. WELLHAUSEN, *Das Evangelium Marci* (2nd ed., 1909), pp. 124 f.; E. NORDEN, *Agnostos Theos* (1912), pp. 194-201; W. HESS, *Jesus von Nazareth* (1906), p. 113; K. BUCHHEIM, *Das messianische Reich* (1948), p. 290. H. SCHELL, *Christus* (1922), pp. 18 f., seems to be of this opinion also, but he emphasizes the messianic character of the Temple logion. For criticism, cf. R. A. HOFFMANN, "Das Wort Jesu vor dem Zerstörung und dem Wiederaufbau d. Tempels," *Heinrici Festschrift* (1914), pp. 130-139, esp. 136-138; Ed. MEYER, I, 188-192.

<sup>27</sup> R. A. HOFFMANN, *op. cit.*, pp. 138 f., casts doubt upon the historicity of the whole account of the hearing of witnesses on the ground that "in dem lukanischen Parallelbericht, der unabhängig von der Matt.-Mark-Tradition verfasst sein dürfte, von einem Zeugenverhör überhaupt nicht die Rede ist" (p. 138). But doubtless Luke omits the hearing of the witnesses only because it did not influence the outcome of the trial decisively (cf. Excursus IV). A reminiscence of the hearing would seem to be present in Luke 22:71. Since the scene Mark 14:57-59 is verified by 15:29, it must not be regarded as suspect.

the possibility of exploiting, for its purpose, despite its lack of unanimity, the evidence given.

And so the proceedings came to a deadlock. When Caiphas recognized this he took a step which it seems he would have preferred not to take. He tried to bring about a decision by direct means. The very words about destroying the Temple and building it up again had a messianic tone for the Jews of that time, because they looked forward to a renewal of the glory and magnificence of the Temple when the Messiah should come.<sup>28</sup> Besides, Jesus had already often awakened at least a suspicion in His adversaries, by various actions and utterances of His, that He claimed to be the Messiah.<sup>29</sup> Hence Caiphas, who wanted to bring matters to a head at last, put the question of His messianic claim directly to Jesus: "Art thou the Christ, the Son of the Blessed One?" (Mark 14:61). The expression "Son of the Blessed One" is an apposition to "the Christ" and must therefore have been used as having essentially the same meaning, namely, as the title of the Messiah.<sup>30</sup> (As it was not permitted to speak the name of God,

<sup>28</sup> Rabbinical documentation in BILLERBECK, I, 1003-5; documentation from the apocryphical writings in BOUSSET-GRESSMANN, pp. 238-240. See also M. SIMON, "Retour du Christ et reconstruction du Temple dans la pensée chrétienne primitive," *Aux sources de la tradition chrétienne* (Festive volume in honor of M. Goguel, 1950) pp. 247-257, esp. 247 f.

<sup>29</sup> Cf. Mark 10:48; 11:9 f., and numerous texts in John.

<sup>30</sup> As far as we know "Son of God" was not a usual name for the Messiah in Judaism. The documentation assembled in BILLERBECK, III, 17, 19 f., for instance, from the apocryphical and rabbinical literature, hardly fits the case. 1 Enoch 105:1 f. is condemned as an interpolation due to Christian influence, and in 4 Ezra 7:28 f.; 13:32, 37, 52; 14:9, it is assumed, on the strength of various translations of the last Semitic (Aramaic) original, that the original text had contained the word "Servant" (*ibid.*). As for the rabbinical literature, it bears witness to the messianic interpretation of Ps. 2:7, it is true, but only late and rarely, and it is particularly noteworthy that the title "Son of God" is never used apart from a direct quotation of the text of the psalm. In this connection see W. G. KÜMMEL, "Das Gleichnis von den bösen Weingärtnern," *Aux sources de la tradition chrétienne* (Festive volume in honor of M. Goguel, 1950), pp. 120-131, esp. 130, n. 36 f.; J. SCHMID, *Das Evangelium nach Markus* (3rd ed., 1954), p. 18. If, according to this, the messianic use of the title is not proved for certain to have been current in Judaism, this does not say definitely that it was fully unknown. Cf. even J. BIENECK, *Sohn Gottes als Christusbezeichnung der Synoptiker* (1951), p. 25. One must reckon with the fact that the rabbinical school delib-

Caiphas paraphrases it as "the Blessed One.") Now since Jewry awaited a purely human Messiah,<sup>31</sup> Caiphas's question concerning sonship of God cannot have referred to the Deity. The high priest wished to know about the messianic claim of Jesus and about this only.

Mark's account (and also Matthew's) is so constructed as to make this question appear to be the climax to all the previous proceedings. Matthew underlines this still more by making the

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erately avoided this messianic title, partly because it had become a common title of honor for Jesus on the part of the Christians (BILLERBECK, III, 20), partly because it evoked associations with mythology and must therefore have seemed repellent, and also because antagonism to Rome forbade the use of a predicate corresponding to *Divi filius* (BOUSSET-GRESSMANN, p. 228). In the New Testament there are two texts in which the expressions "Son of God" and "Christ" are obviously used as being synonymous: Luke 14:41 and Acts 9:20, 22. They alone forbid our declaring as *impossible* on the ground of certain Jewish documentary evidence, the messianic meaning of the expression "Son of the Blessed One" in Mark 14: 61. According to Chr. MAURER, "Knecht Gottes und Sohn Gottes im Passionsbericht des Markus-Evangeliums," ZThK, 50 (1953), 24, 27, "Son of God" here means the vicariously suffering servant of God, but it still remains unexplained how Caiphas should have come to pose the question concerning such a claim. If the title is really used in the sense of "Servant of God" here—a thing which can scarcely be proved—then it must be understood in terms of the servant of God conception of the time, namely, simply as a title for the Messiah (without the conception of suffering being bound up with it).

<sup>31</sup> The official theology of Judaism in the time of Jesus, like the popular mind, knew only a human Messiah, see BILLERBECK, III, 20–22; BOUSSET-GRESSMANN, pp. 222–232; P. VOLZ, *Die Eschatologie der jüdischen Gemeinde im ntl. Zeitalter* (2nd ed., 1934), pp. 203 f. Trypho the Jew in Justin Martyr's *Dialogue* 49 expresses the common conviction: "We all await in the Messiah a man of men." Even though the old Synagogue ascribed to the Messiah "pre-existence" (see BILLERBECK, II, 333–340), superiority over the angels (cf. for instance *Tanch. B. Toledoth* § 20 [70a] in BILLERBECK, I, 483), the seat at the right hand of God and the coming on the clouds of heaven (see *below* n. 50), it nevertheless held firmly to the dogma of the human nature of the Messiah. Even the messianic figure of the Psalm of Solomon 17, which is drawn in such wonderful colors, is "a thoroughly human figure" (BOUSSET-GRESSMANN, p. 228). In the late Jewish apocalyptic writings, to be sure, the eschatological leader bears almost supernatural features; see BOUSSET-GRESSMANN, pp. 259–268, and VOLZ, *op. cit.*, pp. 224–228. Nevertheless, even there one can hardly say that he is a divine being—"être divin" (J. BONSIRVEN, "Judaism X: Le Messianisme," in the *DictB*, Supplement IV [1949], 1232–1258, esp. 1241), but only of a "heavenly human being." "All Jewish writers agree that the Saviour is below God" (VOLZ, *op. cit.*, p. 225). The messianic conception of the chief priests and scribes who tried Jesus assuredly had nothing in common with the apocalyptic conception of the Messiah which was current only in small and elect circles.

high priest introduce his question with a solemn adjuration: "I adjure thee by the living God that thou tell us . . ." (Matt. 26:63). No unbiased reader of one of the two gospels can escape the impression that the success or failure of the plans of His enemies depended upon the answer of Jesus which would now follow. If the answer were "Yes," they had won; if "No," they had to bury their hopes. But this means that if Mark and Matthew have described the course of the trial correctly in its essentials—and there is no valid reason for doubting that they have—then the sanhedrists were resolved to consider Jesus as convicted in the case of an answer in the affirmative. They intended to treat the open and clear claim of Jesus to be the Messias as a capital crime.

This conclusion, seldom drawn though it is, is almost inevitable. There is only one way of evading it, namely, to assume that the high priest's question was only intended as the prelude to further inquisitorial proceedings, in the course of which it would have been hoped to extract from the Accused some more gravely incriminating statement. But Caiphas's question definitely does not give the impression of working up to a distant goal; it demands nothing more than a "Yes" or a "No." Jesus had kept silent up till then. That He should suddenly let Himself be drawn into a lengthy dialogue now was not to be expected. The high priest therefore tried to force a direct decision; for him the question put to the Accused meant, in effect, whether He pleaded guilty or not.

Against this interpretation, it has been argued that it would not have been admissible for the Sanhedrin to make Jesus' testimony to His messiasship the sole basis of a death sentence.<sup>32</sup> Those who argue in this way set out from the premise that the Sanhedrin gave an objectively justified and just verdict. Whether this premise is correct must first be proved, however. This question of facts cannot be decided on a priori considerations. It has been established, it is true, that the Jewish court adhered to the legal forms in its use of the evidence of witnesses; but that does not say that it kept exactly to the letter and spirit of the law in pass-

<sup>32</sup> Cf., finally, BIENECK, *op. cit.*, p. 54, n. 30, and RICCIOTTI, *op. cit.*, p. 601.

ing sentence. To use as the basis of a death sentence the statements of witnesses which were null and void because of lack of unanimity would be a very risky beginning. On the other hand, it was quite a different matter to declare the Accused convicted on the basis of His own admission of a capital crime, when both law and custom left pretty free scope for the definition of this crime. And actually, blasphemy or profanity,<sup>33</sup> of which His enemies wished to find Jesus guilty, was a very elastic conception indeed. The post-Christian Jewish *Halacha* gives an unusually narrow definition. According to it, blasphemy was committed only if one cursed God explicitly, pronouncing the name Jahweh distinctly: "The blasphemer is only guilty if he pronounces the name of God distinctly."<sup>34</sup> It may be taken as certain that this narrow definition had no validity in the time of Jesus.<sup>35</sup> Those who have objected, on the other hand, that Jewry, having to defend itself against the accusation of illegalities in the trial of Jesus, had taken care to define blasphemy more narrowly later,<sup>36</sup> in the first place undoubtedly overestimate the impression which the accusation of the Church has made on Jewry; and in the second place, overlook the fact that the narrowing of the conception of blasphemy is completely in line with the development of Jewish law. For after

<sup>33</sup> BICKERMANN, *op. cit.*, pp. 176-179, emphatically disputes that the Greek word βλασφημία used in Mark 14:64 means blasphemy. Both in profane Greek and in the N.T., he maintains, it signifies any offensive, offending, or even unseemly expression, irrespective of whom it is directed against. The word could only have the meaning of blasphemy if God is directly named as object (*Antiquities* iv. 8. 6. § 202) or if the direct context demands the amplification of this object (John 10:33). Neither of these two conditions is present here and the expression simply means "mauvais propos" (p. 177) or "énormité" (pp. 179 f.). From this BICKERMANN draws the conclusion that the Sanhedrin cannot have passed any sentence of death. But in Mark 14:61-64 the context surely places it beyond all doubt that the utterance of Jesus was taken as being directed *against God*. God is referred to both in the high priest's question ("the Blessed One") and in the answer of Jesus ("the Power").

<sup>34</sup> *Mishna Sanh.* VII 5a.

<sup>35</sup> Cf. KLAUSNER, *op. cit.*, p. 463; BICKERMANN, *op. cit.*, p. 176, n. 2; E. MEYER, II, 452, n. 1. The outmoded theory that the rule given in *Mishna Sanh.* VII 5a was already binding on the Sanhedrin of Jesus' time is to be found in W. BOUSSET, *Kyrios Christos* (1913), p. 53.

<sup>36</sup> GOGUEL, *op. cit.*, p. 426.

the elimination of the Sadducees, with their rigorous theory and practice of the law, the milder interpretation of the Pharisees gained ground progressively.<sup>37</sup> But even in the rabbinical period the narrow mishnic definition of blasphemy was not the only one prevailing. According to the rabbis, even one who spoke disrespectfully of the Torah or "stretched out his hand to God" could be regarded as a blasphemer.<sup>38</sup> Several incidents in the history of Jesus and the apostles show that the broader interpretation was current in the time of Jesus.<sup>39</sup> The question now is whether the claim to be the Messiah was regarded or could have been regarded as blasphemy. Various considerations seem to make an answer in the negative appear the obvious one. The Messiah awaited by the Jews was not a supernatural or superhuman but a human being; therefore it seems doubtful whether a claim to be he could be regarded as an infringement of the majesty of God. But the salient point often referred to is that the Jews did not try on a charge of blasphemy any others of the claimants to the messiahship at that time.<sup>40</sup> However, this argument is anything but conclusive. The only person who we know for certain claimed to be the Messiah<sup>41</sup> or allowed himself to be proclaimed as such, namely, Simon Bar

<sup>37</sup> See Excursus VI.

<sup>38</sup> Sources given in BILLERBECK, I, 1008-1019.

<sup>39</sup> Mark 2:7; John 10:33; Acts 12:22 f.; 14:14. The work of E. W. DAILY, *A Study of Blasphemy in the Gospels* (Diss. Southern Baptist Seminary, 1954) was not available to me. The Old Testament nowhere gives a definition of blasphemy. See Ex. 22:27; Lev. 24:11, 16; Num. 15:30 f.; 1 Kings 3:13; 3 Kings 21:10.

<sup>40</sup> Finally, cf., for instance, GOGUEL *op. cit.*, p. 426, and J. LEBRETON, *DictB*, Supplement IV (1949), 1055.

<sup>41</sup> It is not recorded of any of the first-century revolutionaries or popular leaders that he claimed to be the Messiah—neither of Judas the Galilean (*Jewish War* ii. 4. 1. § 56; *Antiquities* xvii. 10. 5. § 271; Acts 5:37), nor of his son Menachem (*Jewish War* ii. 17. 8 f. § 433-448; *Vita* v. § 21), nor of Eleazar ben Dinaj (*Antiquities* xx. 6. 1. § 121; xx. 8. 5. § 161; *Jewish War* ii. 12. 4. § 235; ii. 13. 2. § 253; *Mishna*, *Sota* IX 9a; *Schir* r. 29b to *Cant.* 2:7; cf. H. BIETENHARD, *Sota* [1956], pp. 153 f.), nor of Theudas (according to *Antiquities* xx. 5. 1. § 97, he claimed to be a "prophet," according to Acts 5:36, to be "somebody"); nor of the Egyptian of the time of the Procurator Felix, who also claimed to be a "prophet" (*Antiquities* xx. 8. 6. § 169-172; *Jewish War* ii. 13. 5. § 261-263; cf. Acts 21:38); nor of that charlatan of the time of Festus who tried to lead the people out into the desert (*Antiquities* xx. 8. 10. § 188).

Kochba (132-135 A.D.),<sup>42</sup> lived at a time when the pharisaic interpretation, the co-called Mishnic Criminal Code, was beginning to prevail. Moreover, that revolutionary hero corresponded absolutely ideally with the popular Jewish mental picture of the belligerent political Messiah, whereas Jesus must have appeared to his contemporaries to be the complete antithesis of that picture. And finally, Bar Kochba, who was acclaimed by the Rabbi Akiba, the most celebrated doctor of the law of his time, as the Messiah-King, the star that was destined to rise out of Jacob (Num. 24:17), enjoyed not only the sympathy of the populace but also that of a large proportion of the Jewish authorities; whereas Jesus, by His teachings and His works, had come into irreconcilable conflict with the ruling classes.<sup>43</sup> And there is yet another point: the Jews expected the Messiah to prove his identity as such. A Messiah imprisoned, forsaken by his friends, and delivered, helpless, into the power of his enemies—this was an impossible conception to them. A person who, in such circumstances, proclaimed himself to be the Messiah, the holder of the highest dignity conferred by God upon man, could not fail to be a blasphemer who dared to deliberately make a mockery of the great promises given by God to His Chosen People.<sup>44</sup> Even if such a judgment is not quite iden-

<sup>42</sup> SCHÜRER, I, 682-695.

<sup>43</sup> Cf. BÜCHSEL, *Jesus* (1947), p. 112: "Gewiss haben die Juden nicht jeden, der den Messiasanspruch für sich erhob, zum Tod verurteilt. Aber die anderen, die dies taten, waren entweder belangloser oder Männer, die der Hohe Rat aus anderen Gründen gewähren lassen konnte. Mit einer so umfassenden und einflussreichen Busspredigt an das Volk, seine Führer eingeschlossen, ist ihrer keiner hervorgetreten. Dieser Angriff auf Volk und Führerschaft machte die Entscheidung unausweichlich, sie musste schliesslich gegen ihn fallen."

<sup>44</sup> M.-J. LAGRANGE, *L'Évangile selon S. Marc* (1947), pp. 401 f., and *Le Messianisme chez les Juifs* (1909), pp. 221 f., contests this, and asserts that according to rabbinical teaching the Messiah was to lead a hidden life in the beginning. It is true to say that this belief is to be found among the later rabbis, cf. BILLERBECK, II, 339 f. and 488 f.; N. MESSEL, *Der Menschensohn in den Bilderreden des Henoch* (1922), pp. 71-76. But in this the rabbis have in mind the time *before* the public emergence of the Messiah. When he comes, no one will know where he has been hiding himself up till then; and it was in fact brought up against Jesus that His origin was known: John 7:27. But according to the rabbinical view the Messiah, having emerged into public life, would prove himself as such either by standing on the roof of the Temple enveloped in divine light (BILLER-

tical with a charge of blasphemy, it is only a small step from it—a step which a court already prejudiced against the person in question would find all the less scruple in taking.<sup>45</sup> Hence Caiphas' question is really the decisive question. All depended upon how the Accused answered it—with a "Yes" or a "No."

According to the synoptic gospels, throughout His whole ministry Jesus avoided calling Himself the Messiah in public. Clearly, His reserve was due to His wish not to awaken the nationalistic and political hopes which His contemporaries cherished of the Messiah. Now, knowing that His task is shortly to be completed, in the presence of the legitimate, though incredulous and unworthy, leaders of His people, He does not hesitate to reply clearly "I am" (Mark 14:62), to the clearly posed question concerning His messiahship.<sup>46</sup> True, His idea of the Messiah had little or nothing in common with that of Judaism. The high priest did not ask about any particular messianic idea, however, but merely whether Jesus claimed to be the promised Messiah. And there was no reason for Jesus, who knew Himself to be the fulfillment of

BECK, III, 9 f.), or by being introduced by Elias (BILLERBECK, IV, 797 f.). There even appears to be evidence of the idea that the high priest of the messianic time would make known the Messiah (*Test. Levi* 2, see BILLERBECK, IV, 798). Pirque Maschiach (*Beth ha-Midr.* 3, 73, 17) is particularly expressive of the rabbinical expectations: "In that hour God will crown the Messiah with a crown and set the helmet of salvation upon his head, and clothe him in radiance and glory, and adorn him with robes of honor, and set him upon a high mountain to bring joyful tidings to Israel" (BILLERBECK, III, 10). The rabbinical testimonies are referred to by Justin Martyr in three places in his *Dialogues*: 8. 4; 49. 3; 110. 1.

<sup>45</sup> Cf. also ALBERT SCHWEITZER, *Geschichte der Leben-Jesu-Forschung* (5th ed., 1933), p. 439, n. 1 (the judges of Jesus took the admission of His messiahship as blasphemy because they wanted to get rid of Him); likewise E. MEYER, II, 452, n. 1.

<sup>46</sup> The text can be regarded as fully verified; the reading found in later MSS, "Thou hast said it, that I am he," is an amalgamation of Mark with the Matt. form (26:64: "Thou hast said it"). That the less definite affirmative in Matthew (cf. also Luke 22:70) is original and Mark's formulation a recasting due to apologetic intent (as maintained, for instance, by J. HÉRING, *Le Royaume de Dieu et sa venue d'après Jésus et d'après l'apôtre Paul* (1937), p. 128; GOGUEL, *op. cit.*, p. 422; CULLMANN, *op. cit.*, pp. 19 f.) is improbable; Matthew and Luke have made the answer of Jesus to the high priest uniform with His answer to Pilate (Mark 15:2: "Thou sayest it").

the prophecies concerning the Messiah, to ignore the question or deny His identity. Nevertheless, He explains His self-testimony in a certain sense by the prophecy which He adds: "And you shall see the Son of Man sitting at the right hand of the Power and coming with the clouds of heaven" (Mark 14:62).<sup>47</sup>

By alluding to two messianic texts of the Old Testament,<sup>48</sup> He holds out the prospect of His mighty Second Coming at the right hand of God. Thereupon He encounters the objection which is not spoken outright, to be sure, but as we have seen, is implied, that His claim to be the Messiah lacks the divine proof of identity which would exclude all doubt. At the end of this aeon, when He will appear beside God on the clouds of heaven, as the Son of Man, clothed with power and majesty, He will be revealed to men, including those who are now sitting in judgment upon Him, in a convincing manner as Messiah. The unbelieving generation shall then have the "sign" (cf. Mark 8:11) which it had demanded in vain again and again.<sup>49</sup> As Judaism also saw its Messiah, whom it conceived as a human being, sitting at the right hand of God and coming on the clouds of heaven,<sup>50</sup> it is inadmis-

<sup>47</sup> Regarding Matthew's version (26:64), cf. GOGUEL, *op. cit.*, pp. 423 f.

<sup>48</sup> The words "Son of Man . . . coming on the clouds of heaven" contain an allusion to Dan. 7:13; the words "sitting at the right hand of God" allude to Ps. 110 (109):1.

<sup>49</sup> E. MEYER, I, 194, is therefore wrong in maintaining that the Son of Man logion lacks purpose and is therefore unhistorical. M. BUBER, *Zwei Glaubensweisen* (1950), p. 110, also appears not to have seen the connection between the affirmative v. 62a and the prophecy v. 62b as he asserts, without giving any further ground, that it is "inadmissible" to connect the "I am" with what follows; he also contests the linking up of the "sitting" with the "coming" (which, after all, is given in the two O. T. texts), and finds fault with the "more Gnostic than Jewish" expression "Power" (which in reality is the counterpart of the common Hebrew-Aramaic expression for God, *geburah* or *geburthā*; see G. DALMAN, *Worte Jesu*, I (2nd ed., 1930), 164 f.; BILLERBECK, I, 1006 f.; W. GRUNDMANN, TWB, II, 298, lines 42 ff.).

<sup>50</sup> As regards the messianic interpretation of the Ps. 110 (109): 1 in pre-Christian Judaism, see BILLERBECK, IV, 452-459; the N.T. presupposes the familiar character of this interpretation in Mark 12:35-37. Daniel 7:13, too, is "nowhere applied collectively to the 'people of the saints' by the old Synagogue but always solely to the Messiah" (BILLERBECK, I, 956). Actually, the earliest metaphorical passages of the Book of Enoch connect Daniel 7:9 f. with the Messiah (1 Enoch 46:1-3; 48:2; 69:29). The coming on the clouds of heaven is explicitly ascribed to the

sible to assume that the sanhedrists understood the words of Jesus otherwise than as a claim to be the Messiah.

And they did not need to hear any more. Jesus had openly and solemnly proclaimed Himself the Messiah, and, in doing so, provided the factual proof which they were resolved to treat as blasphemy. And so it came to the stormy final scene which Mark describes: "But the high priest tore his garments and said: 'What further need have we of witnesses? You have heard the blasphemy. What do you think?' And they all condemned Him as liable to death" (Mark 14:63 f.).

It has been asserted that the angry reaction of the high priest is the best proof of the sincerity of his conviction; for if he had guessed or even desired Jesus' confession of His messiahship, he would not have been so utterly dumbfounded as actually to tear his sacred and magnificent high priestly robes.<sup>51</sup> This argument misses the point completely. Caiphas dared not, on any account, omit that gesture of sorrow and indignation, whether his excitement was spontaneous and sincere or simulated and hypocritical.<sup>52</sup> Besides, it is not to be assumed that he was wearing his gorgeous high priestly robes at that session of the Sanhedrin.<sup>53</sup>

Hence, by tearing his garments, Caiphas expressed symbolically the fact that he regarded the declaration of Jesus as blasphemy. He then announced his opinion in clear language: "What further need have we of witnesses? You have heard the blasphemy!" With these words he meant to say: All present have heard the statement, the blasphemous character of which is clear to him and, so he thinks, also to the other members of the Sanhedrin,

Messiah, with allusion to Dan. 7:13, in 4 Esdras 13: 1 ff. The messianic interpretation of the text is familiar to the Jews according to Justin Martyr too, *Dialogue* 32. 1. For the rabbinical evidence see BILLERBECK, I, 67, 483, 486, 843, 956 f. Regarding the expectation of a purely human Messiah, see n. 31 above.

<sup>51</sup> R. W. HUSBAND, *The Prosecution of Jesus* (1916), p. 201.

<sup>52</sup> *Mishna Sanh.* VII 5b; 4 Kings 18:37.

<sup>53</sup> Between the years 6 and 37 A.D., the high priestly vestments were held in safe keeping in the fortress Antonia by the Romans and only given out for the liturgical functions on feast days, according to *Antiquities* xviii. 4. 3. § 94, seven days before the feast, but according to *Antiquities* xv. 11. 4. § 404, only on the eve of the feast.

and so the testimony of others is unnecessary. None of the sanhedrists raised any objection openly against this interpretation of the words of Jesus. So Caiphas invites his fellow judges to pass sentence: "What do you think?" The Law of Moses prescribed death by stoning for blasphemy (Lev. 24:16). The sanhedrists voted unanimously for a death sentence. As there was no court of appeal in Jewish criminal law, the sentence was forthwith valid. But in the time of Jesus, a death sentence could not be carried out by the Jews.<sup>54</sup> Only the Roman procurator possessed the full power over life and death, the so-called *jus gladii*. To make amends for this, some of the Jews present began roughly ill-treating the Accused, who had just been condemned (Mark 14:65). They spat at Him, blindfolded Him, hit Him in the face, then derisively challenged Him to "prophecy," which no doubt meant to say, despite His eyes being blindfolded, who had struck Him.<sup>55</sup>

<sup>54</sup> See Excursus VII.

<sup>55</sup> According to Mark, some of the sanhedrists too would seem to have taken part in this ill-treatment, which must not be confused, by the way, with the similar scene, John 18:22. (P. BENOIT, *Ang*, 20 [1943], 156 f., thinks otherwise; and K. L. SCHMIDT ["Jesus Christos kolaphizomenos und die 'colaphisation' der Juden," *Aux sources de la tradition chrétienne* (1950), pp. 218-227, esp. 219], thinks it possible that the scene in John is an "echo" of the synoptic one.) Mark mentions first "some" and then explicitly "the attendants," as taking part; but perhaps the two terms mean the same persons. (The assumption that the "buffeting" [of the "some"] is different from the "blows" [of the "attendants"] is not lexicologically justified, see BAUER's German-Greek Dictionary, 1337 and 799, here also the reference to Hesychius: *κολαφιζόμενος* = *ῥαπιζόμενος*). At any rate, according to Luke 22:63, it was not the sanhedrists but only the men who were guarding Him who ill-treated Jesus. The fact that the scene Luke 22:63-65 is identical with that described in Mark 14:65 is often wrongly disputed (for instance by K. KASTNER, *Jesus vor dem Hohen Rat* [1930], pp. 110-112, according to whom Jesus was ill-treated before as well as after the meeting of the Sanhedrin, while INNITZER, *op. cit.*, p. 164, assumes one ill-treatment by the sanhedrists themselves actually in the courtroom and another by the guards between the condemnation and the early-morning session). The location of the scene in Luke is the result of a literary editing of Mark's text (see Excursus IV). Anyhow, one can much more easily understand these acts of violence taking place *after* rather than *before* the announcement of the sentence. Whether the incident is placed chronologically correctly in Mark, is not quite certain. It may be that Mark, in coordinating the ill-treatment with the condemnation, was guided by the motive of throwing into strong relief the bitter fact of the rejection of Jesus by the representatives of Israel: The ruling body condemned Him to death, men of the *people* abused and ill-treated Him. Historically the scene should probably come after the "consulta-

The sitting ended with the whole Sanhedrin deciding to hand Jesus over to the Roman procurator—naturally with a well-formulated charge, framed *ad hoc*. Day was breaking when the sitting came to an end (Mark 15:1).

### EXCURSUS III

#### *The Regular Meeting Place of the Sanhedrin*

ACCORDING to the synoptics, the proceedings against Jesus took place in "the house of the high priest," i.e., of Caiphas. The meeting two days before Easter, at which the secret arrest of Jesus was decided upon, had been held in this same place (according to Matt. 26:3). It is improbable, but not quite impossible, that the gospels, when they speak of the house of Caiphas, mean the building in which the Sanhedrin normally met. There is no proof in rabbinical literature that the Sanhedrin held or could hold its meetings in the palace of the high priest (cf. BILLERBECK, I, 1000). Hence, in the case under review an exception must have been made (cf. SCHÜRER, II, 213). What made the sanhedrists decide on this, we do not know. The mere fact that it was nighttime scarcely explains the departure from this rule, as the Sanhedrin had also met in the palace of Caiphas when they decided on the arrest of Jesus, and this was certainly not nighttime, but day (according to Matt. 26:3).

The extrabiblical information concerning the meeting place of the Sanhedrin is not easy to reduce to the greatest common denominator. We have three sources of information to distinguish—Josephus, the Mishna and the Talmud.

Josephus calls the meeting place of the Sanhedrin the town hall *βουλή, βουλευτήριον*. According to his indications (*The Jewish War* v. 4. 2. § 144; vi. 6. 3. § 354; cf. ii. 16. 3. § 344) this building must have stood where the oldest city wall led from the Xystos Square in the Upper Town to the western portico of the Temple Square, i.e., on one of the two slopes or right in the Tyropæon (O. HOLTZMANN, *Leben Jesu* [1901], p. 371). The Romans burned the town hall *after* they had destroyed the Temple and its subsidiary buildings, but *before* they took possession of the Upper Town. The town hall and the buildings which were burned with it are definitely indicated in Josephus as belonging to the city and not to the Temple. According to the Acts, the place must have been rather low-lying, because there is mention of "going down" to the meeting place of the Sanhedrin (22:30; 23:10).

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tion" mentioned in Mark 15:1, with which the sitting of the Sanhedrin closed (cf. pp. 145 f. *below*).

According to the Mishna, the Sanhedrin was accustomed to meet in the inner hall of the Temple, in an apartment called *lishkath haggazith* (mentioned by BILLERBECK, I, 998 f.). This name is variously interpreted, either as "Hall on the Xystos" (SCHÜRER, II, 211), or as "Hall in which law is spoken" (REIFMANN, cited by S. KRAUSS, *Sanhedrin-Makḥot* [1933], pp. 42 f.), or as "Hewn Stone Hall" (the majority of scholars). If the last-named meaning is accepted, the expression should not really be taken to mean that the hall was built of hewn stone, for as SCHÜRER (*loc. cit.*) aptly remarks, such a mode of building would not be so remarkable as to give it a name. The most recent assumption is, rather, that the name Hewn Stone Hall points to the hall having been roofed with one single dressed stone. If that is so, it may well be the crypt situated under the sacred rock of the Mosque of Omar, which would seem to have formed the center of both the Temples of Solomon and of Zorobabel (S. KRAUSS, *op. cit.*, p. 380; cf. H. SCHMIDT, *Der heilige Fels in Jerusalem* [1933]). SCHÜRER and BILLERBECK regard the Mishna particulars as reliable. Efforts have been made to explain why the house of Caiphas was chosen for the trial of Jesus and not this hall. Some say that as the gates of the Temple Mount were locked at night (*Middot* I, 1), the Hewn Stone Hall, being situated in the Temple precincts, would have been out of the question for a night hearing (SCHÜRER, II, 213; BILLERBECK, I, 1001). But Matt. 26:3 speaks against this reasoning; besides, it is only plausible if Jesus' last night, contrary to the witness of the synoptics, was not the night of the Pasch. For on the night of the Pasch the gates of the Temple forecourts were opened at midnight instead of only at daybreak as usual (*Antiquities* xviii. 2. 2. § 29). The Acts make it seem rather improbable that the Sanhedrin used to meet in the inner hall of the Temple in the time of Jesus or the following years; for according to Acts 22:30-23:10, non-Jewish persons such as the Roman tribune of Jerusalem, who were not permitted to enter the inner court of the Temple, occasionally attended sessions of the Sanhedrin.

The Talmud states that the Sanhedrin left the *lishkath haggazith* forty years before the destruction of the Temple and from then onward held its sittings in the market halls, or in a market hall (cf. BILLERBECK, I, 1000). SCHÜRER (II, 212) rejects this tradition as completely untenable, but he has met with much contradiction in this. S. KRAUSS (*op. cit.*, p. 25) recalls the treasure house of the sons of Hanan in Jeremias 35:4, the important role which the priestly dynasty of Annas played in the time of the second Temple, and the "Halls of Chanan" mentioned in various connections by the rabbis. He therefore considers that the Talmud indication may be taken as meaning that the Sanhedrin had moved its quarters about the year 30 A.D. from the Hewn Stone Hall into the Hall of Annas, which was situated on the Temple Mount. But other scholars believe that the market halls of the house of Chanan were situated not on the Temple Mount but on the Mount of Olives. Among these is J. DÉRENBOURG who, in his *Essai sur l'histoire et la géographie de la Palestine* ([1864], pp. 244-

246), assumes that the Mount of the Temple and the Mount of Olives were connected by a bridge. J. KLAUSNER, in *Jesus von Nazareth* ([2nd ed., 1934], p. 470), is inclined to agree with him; Jesus was probably brought from Gethsemane to one of the market halls of the house of Annas as being the courtroom most quickly reached, he thinks. D. CHWOLSON is particularly emphatic in *Das letzte Passahmahl Christi und der Tag seines Todes* ([2nd ed., 1908], p. 123), in identifying the market halls indicated in the Talmud with the market halls belonging to the family of the high priest Annas which were situated on the Mount of Olives. He holds that the Sanhedrin had moved there about the year 30, and that it was there that Jesus was brought after His arrest.

Of these three locations, only the one indicated by the Mishna is clearly incorrect. The Sanhedrin may have assembled earlier in the Temple forecourt, but in the time of Jesus obviously it did not do so. The only question is whether one should follow the particulars given by Josephus or those of the Talmud. Many scholars, such as SCHÜRER and O. HOLTZMANN, rely upon Josephus; the Jewish authors on the whole give the Talmud the preference, though, to be sure, they are not unanimous as to where the market halls mentioned in the Talmud were situated. But one must at least consider whether Josephus and the Talmud may not have meant the same building. G. DALMAN (*Jerusalem und sein Gelände* [1930], p. 194) seems, as a matter of fact, to identify the market halls indicated in the Talmud with the town hall of Josephus. In a clever but rather too unqualified and sweeping manner J. PICKL (*Messiaskönig Jesus* [1935], pp. 267 f.) seeks to combine the various traditions: A market hall for traders and money-changers stood originally to the southwest of the Temple, in front of the Arch of Coponius; after the new south hall of the Temple had been built the traders moved into it while the Sanhedrin chose for its meeting place the now vacated hall in front of the Arch of Coponius. Others assume that only the preliminary hearing before Annas took place in one of the market halls, but that the real trial, on the other hand, took place in the house of Caiphas (for instance, G. H. C. MACGREGOR, *The Gospel of John* [1928], pp. 329 f.).

Why the trial of Jesus took place in the house of Caiphas, if this was not the usual meeting place, we cannot say, unless we are content with mere conjecture.

## EXCURSUS IV

*Luke's Account of the Proceedings Before the Sanhedrin (22:66-71)*

WHILE MATTHEW's account of the Sanhedrin trial (26:57-68) is very close to Mark's, both in its construction and its details (for its peculiarities, cf. J. SCHMID, *Das Evangelium nach Matthäus* [2nd ed., 1952], pp. 281 f. and N. A. DAHL, *Die Passionsgeschichte bei Matthäus*, NTS, 2 [1955], 17-32), Luke goes absolutely his own way. He arranges the events in the following sequence: Jesus is arrested and brought to the house of the high priest (22:47-54); the denials of Peter (22:55-62); Jesus is ill-treated by His captors (22:63-65); the Sanhedrin meets in the morning and questions Jesus concerning His messiahship (22:66-71).

The most striking departure from Mark's account is the shifting of the trial to daybreak. On this point a great many scholars feel they must give Luke's account the preference over Mark's. Among these are: A. LOISY, *Les évangiles synoptiques*, II (1908), 610; R. W. HUSBAND, *The Prosecution of Jesus* (1916), p. 207; F. C. BURKITT, *The Gospel History and Its Transmission* (5th ed., 1925), pp. 137 f.; J. WEISS-W. BOUSSET, *Die drei älteren Evangelien* (4th ed., 1929), p. 210; K. KASTNER, *Jesus vor dem Hohen Rat* (1930), p. 188; F. HAUCK, *Das Evangelium des Markus* (1931), p. 177; J. KLAUSNER, *Jesus von Nazareth* (2nd ed., 1934), p. 472; J.-M. VOSTÉ, *De passione et morte Jesu Christi* (1937), pp. 115 f.; P. BENOIT, *Ang*, 20 (1943), pp. 150 f.; K. H. RENGSTORF, *Das Evangelium nach Lukas* (4th ed., 1949), p. 248; M.-J. LAGRANGE, *L'évangile de Jésus-Christ* (1949), pp. 575, 715; English translation (1943), II, 243; J. Lebreton, *DictB*, Supplement IV (1949), 1053 f.; G. RICCIOTTI, *The Life of Christ* (1947), p. 595; V. TAYLOR, *The Gospel according to St. Mark* (1952), pp. 646, 565; V. TAYLOR, *The Life and Ministry of Jesus* (1954), p. 198; cf. even R. BULTMANN, *Geschichte der synoptischen Tradition* (2nd ed., 1931), pp. 292-294.

One could agree with this view if it could be shown that Luke owed his divergences to a special source. But such a source is not discernible. The matter contained in Luke 22:54-71 is not materially fuller than that already offered by Mark. On the other hand, Luke's arrangement of the various parts can be understood if we consider the literary technique of the evangelist. The effort, which can also be noted elsewhere in Luke, to give his account the character of a sustained narrative, fully explains why he draws together into one complete report the account of the trial before the Sanhedrin, which is interrupted twice in Mark's Gospel. The biggest insertion in Mark, the story of Peter's denials, which took place in the courtyard of the high priest's house, is placed by Luke after his statement

that Jesus is led into the *house* of the high priest. He follows the denial scene by the episode of the ill-treatment of Jesus by the servants who were guarding him. This incident, which Mark placed at the end of the Sanhedrin trial, Luke inserts earlier in a shortened form, obviously for the same reason as in the case of the denial story, namely, to make his version, for the second part of which (Jesus before Pilate) he has some special material at his disposal, purely an account of the actual legal course of the trial, free from all incidental and secondary episodes. As Luke 22:66, considered critically as a writing, obviously represents a combination of Mark 14:53b and 15:1a, his details of time are of only secondary importance when it is a matter of giving the historical combination of events. The divergence from Mark can be more easily tolerated when one remembers that Luke only reports the final phase of the proceedings against Jesus, which doubtless did take place toward daybreak. The hearing of the witnesses is passed over because it was, practically speaking, without result. The formal death sentence passed by the Sanhedrin is not mentioned either; for it has not yet sealed the fate of Jesus, and in view of the subsequent sentence by Pilate, would have been difficult for readers of the gospel to understand; for they were not familiar, or not very familiar, with the peculiar legal position prevailing in Judea at the time. The special part which the high priest played in the cross-examination of Jesus is not specially mentioned either; those questioning Him are called in a general way "high priests and scribes." From all this it is clear that Luke, to whom Mark's account was doubtless known, only wishes to give quite a summary report of the trial. Therefore it would not be admissible to play off his peculiarities against Mark and to maintain, let us say, that the Sanhedrin did not pass a death sentence on Jesus at all (as do, for instance, HUSBAND, *op. cit.*, p. 135; KLAUSNER, *op. cit.*, p. 465, n. 71; Fr. HAUCK, *Das Evangelium des Lukās* [1934], p. 275; RENGSTORF, *op. cit.*, p. 249, among others; and in a correct sense, J. SCHMID, *Das Evangelium nach Lukās* [2nd ed., 1951], pp. 274 f.; also J. FINEGAN, *Die Überlieferung der Leidens- und Auferstehungsgeschichte Jesu* [1934], pp. 23-25, this latter sometimes with very debatable arguments).

In only one respect is Luke's report more detailed than that of Mark. The question about Jesus being the Messiah and the Son of God is divided into two independent questions, and two corresponding answers of Jesus are likewise given. Here Luke can be following some special tradition (Johannine? cf. P. BENOIT, *op. cit.*, p. 149, n. 2; E. OSTY, "Les points de contact entre le récit de la passion dans S. Luc et S. Jean," RSR, 39 [1951], 146-154); but it is also possible that he is only giving Mark's account in a more emphatic form. The actual extra matter is restricted to the preamble to the answer of Jesus (22:67b-68): "If I tell you, you will not believe me; and if I question you, you will not answer me" (with its allusion to 20:3, 8; cf. also Jer. 38:15). Although Jesus makes two answers according to Luke, the words about coming again on the clouds of heaven are not given. That

the logion about sitting at the right hand of God is secondary as compared with its position in Mark's rendering, is shown by the expression "power of God" (Luke 22:69). Mark, with whom "power" is synonymous with "God," doubtless has the original wording here.

Regarding the meaning of the double question, cf. *below* p. 128, n. 14; the hypothesis of a separate daybreak sitting, cf. pp. 145 ff.; the placement of the ill-treatment scene by Luke cf. *above* p. 111, n. 55; the omission of the hearing of the witnesses by Luke, cf. *above* p. 101, n. 27. For the whole, cf. J. C. HAWKINS, "Three Limitations to Luke's Use of St. Mark's Gospel: 3. St. Luke's Passion Narrative Considered with Reference to the Synoptic Problem," *Oxford Studies in the Synoptic Problem* (1911), pp. 76-94; A. BARR, "The Use and Disposal of the Marcan Source in Luke's Passion Narrative," *ExpT*, 55 (1943/4), 227-231; M. KIDDLE, "The Passion Narrative in St. Luke's Gospel," *JThSt*, 36 (1935), 267-280; P. WINTER, "The Treatment of his Sources by the Third Evangelist in Luke XXI-XXIV," *SfTh*, 3 (1955), 138-172.

#### EXCURSUS V

### *The Historicity of the Sanhedrin Trial*

HANS LIETZMANN, Professor of Ancient Church History in Berlin (d. 1942), published in 1931, in the reports of the Prussian Academy of Science, a study on the trial of Jesus which represents the most notable effort yet made to shatter the traditional interpretation of Mark 14:53-15:1. He comes to this conclusion: That the Jewish authorities neither tried Jesus nor sentenced Him to death, but merely arrested Him and handed Him over without formality to the Roman authorities; and that the whole passage Mark 14:55-65 is unhistorical. This conclusion is based by him upon the following observations and assertions:

1. That neither Peter nor any other material witness attended the alleged trial before the Sanhedrin; and therefore that any account of it must be open to suspicion.
2. That the trial narrative Mark 14:55-65 is a secondary interpolation in the unbroken sequence of the denial story; because the older story of 14:54 is continued in a smooth sequence at 14:66.
3. That in the mention of the Sanhedrin, 15:1 takes no account of 14:55-65; and that it is therefore a visible duplication, and what is more, it is the older version.
4. That the Jewish authorities had unlimited power over life and death in the time of Jesus; hence, if the Sanhedrin had passed a death sentence, Jesus would have been stoned.

LIETZMANN's publication caused a great sensation, as extracts were pub-

lished in various papers (for instance, in the *Manchester Guardian* of July 11, 1931; in the periodical *Forschungen und Fortschritte* [1931], p. 280, as well as in twelve leading German daily newspapers), and so became known to a wide public. It also awakened lively discussions in academic circles. LIETZMANN found himself obliged to defend his position against various attacks; this he did in the *Zeitschrift für neutestamentliche Wissenschaft*, of which he himself was the editor. (Cf. *ibid.* [1931], pp. 211-215; [1932], pp. 78-84.) In his *Geschichte der Alten Kirche*, I (2nd ed., 1937), 50, he makes the remark, already considerably more cautious, concerning the Sanhedrin trial: "It must remain an open question whether faint memories of real facts have been preserved in this narrative" (Mark 14:55-65). The critical microscope of biblical science has been focused especially upon LIETZMANN's thesis that the Sanhedrin had full juridical powers. In this connection see Excursus VII. His other theses have met with less opposition, but cf. M. DIBELIUS in *ZNW*, 30 (1931), 193-201; M. GOGUEL, *ibid.*, 31 (1932), 289-301; P. FIEBIG, *ThStKr*, 104 (1932), 213-228; H. KOSMALA, *Saat auf Hoffnung*, 69 (1932), 25-39; G. D. KILPATRICK, *The Trial of Jesus* (1953), pp. 1-16. Today, LIETZMANN's standpoint is still represented in principle only by Erich KLOSTERMANN and Rudolf BULTMANN, to mention only the most important names, apart from LIETZMANN's own pupil, Jack FINEGAN.

However, it is not the weight of the names which is decisive, but the weight of the arguments. How does it stand with these? As regards LIETZMANN's first objection, this has already been touched upon in our chapter, "The Sources." To make the acceptance of an account dependent upon whether we can cite a certain witness of it by name is an unreasonable procedure. If this principle were consistently observed how many documents and reports historical research would have to renounce! Besides, it is not as if we could not give any names in our case. Surely Joseph of Arimathea and Nicodemus were definitely in a position to give reliable information regarding the essential course of the proceedings. Joh. WEISS and W. BOUSSER (*Die drei älteren Evangelien* [4th ed., 1929], p. 210) rightly say that it is "simply unthinkable that the friends of Jesus should not have made the most vigorous investigations after His death concerning what had happened at the trial", it would be the most natural thing possible "that the reasons for the condemnation of Jesus should have been heatedly discussed in Jerusalem between His followers and His enemies"; our gospel narratives may be regarded, they hold, as the condensed, written form of these discussions. (Cf. similar expressions of opinion by B. S. EASTON in *AJT*, 19 [1915], 433; A. H. MCNEILE, *The Gospel According to St. Matthew* [1915], p. 398; Ed. MEYER, I, 187; V. TAYLOR, *The Gospel According to St. Mark* [1952], p. 565.) Maurice GOGUEL, who is not an opponent in principle of LIETZMANN's standpoint, points out that the members of the Sanhedrin could not do otherwise than give an exact account of the course of the trial and the allegedly blasphemous statements of

Jesus, in order to justify themselves against the reproaches of the Christians that they had killed an innocent man (ZNW, 31 [1932], 294). In his second objection, LIETZMANN is correct thus far, in saying that the passage Mark 14:55-65 interrupts the story of the denial begun at v. 54 and brought to an end in 66-72. But what does this mean? Definitely no more than that Mark had at his disposal an account of the denial and also an account of the trial. For even LIETZMANN does not dare to assert that the account of the trial had come into St. Mark's Gospel only by interpolation; after all, the authors of St. Matthew's and St. Luke's Gospel found it already in their copies of St. Mark's Gospel. When LIETZMANN maintains that the story of the denial is older than that of the trial before the Sanhedrin, he has not a single clue to go on. It can be demonstrated with a fair degree of certainty that Mark composed the two accounts under discussion; and the considerations which led him to do so can likewise be demonstrated. As they concerned two happenings parallel in time, he could not very well put them simply one after the other. So he makes use of a literary device which is characteristic of him. He cannot get around the consecutive order, therefore he gives the trial story first and then the denial story; but by referring to the second at the beginning of the first (14:54), he cleverly indicates that the events are simultaneous. (On the subject of this technique cf. Ernst von Dobschütz, "Zur Erzählerkunst des Markus," ZNW, 27 [1928], 193-198, esp. pp. 197 f.) After the story of the denial he takes up the thread of the main story again and on doing so once more specifies those taking part (15:1; cf. 14:53, 55a). An entirely analogous instance of this flashback technique is v. 14:66, where the words "And while Peter was below in the courtyard" serve to conjure up once more the picture of the situation already presented in v. 54. Here too the repetition is made necessary because of something inserted just before (vv. 55-56). This only shows that LIETZMANN's third objection is groundless. For 15:1 is just as little a "duplicate" of 14:55 as 14:66a is a "duplicate" of 14:54, or possibly even "the older version." On the contrary, 15:1 is partly the resumption of the interrupted thread and partly continuance of the story.

LIETZMANN's fourth thesis must be dealt with in a special excursus (no. VII).

The doubts cast on the content of Mark 14:55-65 are anything at all but convincing. The more recent research on the Mishna (*see* Excursus VI) has knocked the bottom out of the argument that "it contains too grave breaches of the trial procedure as outlined in rabbinical tradition" (E. KLOSTERMANN, *Das Markus-Evangelium* [3rd ed., 1936], p. 154; cf. R. BULTMANN, *Geschichte der synoptischen Tradition* [2nd ed., 1931], p. 290; OLMSTEAD, *op. cit.*, p. 228; G. BORNKAMM in *Jesus von Nazareth* [1956], p. 150, writes "Historically considered, the narrative arouses critical doubts. . . . In particular, the details are contrary to what we know, fairly reliably, even if from later rabbinical sources, about Jewish trial procedure"). When

the above-mentioned authors, following the precedent of E. WENDLING (*Die Entstehung des Markusevangeliums* [1908], p. 181), explain the disputed passages in Mark as a reproduction of the report of the trial by Pilate (similarly, Ch. GUIGNEBERT, *Jésus* [1947], p. 567), it must be pointed out that the two reports do not coincide in their main features, apart from certain parallels due to analogous conditions. In particular, two items in the first narrative prove that it is sheer caprice to reject this passage. According to Mark, the words of Jesus concerning the Temple had a certain part in the proceedings before the Sanhedrin. Now, it is clear beyond all doubt, from John 2:19 and Acts 6:41, that words which Jesus had really spoken are referred to here. Mark mentions these words, not in the course of his account of the public life of Jesus, but only in 15:29, where it is clearly assumed that the reader has prior knowledge of these words from an earlier part of the gospel. Now, where should Mark have taken his text about the Temple if not from an account of the trial before the Sanhedrin handed down by tradition? But it is precisely because it contains this text, which undoubtedly belonged to the history of Jesus, that this narrative is proved to be authentic tradition. The same applies to the reply of Jesus to the high priest's question (Mark 14:62). To try to establish this statement as an invention of the Jewish adversaries of Jesus is obviously absurd. But neither can it be a creation of Christian tradition, because Christian tradition would scarcely have put the primitive eschatological theme of 14:62 into the mouth of Jesus; above all, it would not have omitted to bring in the resurrection on the third day. M. GOGUEL also relies upon such considerations (ZNW, 31 [1932], 298; *Jésus* [2nd ed., 1950], pp. 419 f., 425), when he declares that the answer of Jesus to the question of Caiphas is "rigoureusement authentique" (so do E. LOHMEYER, *Das Evangelium des Markus* [1937], pp. 330 f.; and W. G. KÜMMEL, *Verheissung und Erfüllung* [2nd ed., 1953], p. 44). The facts are therefore as follows: A report on the trial of Jesus by the Sanhedrin was already available to the first of the evangelists. Of this report, at least two important elements can be proved to be genuine and to rest upon reliable information. Such being the case, even a historian proceeding with an unusual degree of scepticism will not hesitate to trust this report.

Finally, the passages about Peter (14:53-54; 14:66-72), which not even LIETZMANN has cast doubt upon, also demonstrate the untenability of rejecting Mark 14:55-65. For if we eliminate Mark 14:55-65, these texts about Peter involve us in riddle after riddle. If Jesus was not examined and sentenced by the Sanhedrin, why did the members of the Sanhedrin assemble shortly after His arrest, in the middle of the night, in the house of the high priest (14:53)? Did they really only gather hurriedly together to have a look at their hated enemy? Why did the servants of the high priest remain in the courtyard of the high priest's palace until daybreak, instead of going home (14:54, 66-70)? What purpose had Peter in hanging about

the precincts of the palace if not to find out what those assembled in the palace would decide to do with their Prisoner (14:54)? None of these questions can be answered satisfactorily if Mark's report of the trial by the Sanhedrin is not believed.

## 6. AN ASSESSMENT OF THE PROCEEDINGS BEFORE THE SANHEDRIN

THE PROCEEDINGS before the Sanhedrin form the first and fundamental part of the trial of Jesus, and the hotly disputed question concerning the responsibility of the Jews for His crucifixion depends decisively on them. It is therefore desirable to investigate somewhat more closely some of the problems connected with this part of the trial.

In order to assess aright this first phase of the trial it is necessary, first of all, to come to a clear conclusion on the following four questions:

1. Did the Sanhedrin pass a formal death sentence?
2. If so, on what actual criminal facts did it base the death sentence?
3. Did the proceedings before the Sanhedrin constitute a legal trial, or not?
4. Did a second sitting take place in the morning after the night's proceedings?
  1. That the Sanhedrin brought in a verdict of "guilty" against Jesus at the close of their proceedings has been established. The only point in dispute is whether this verdict of guilty can be regarded as a formal death sentence. Many scholars dispute that a death sentence was passed by the Sanhedrin, even if they do admit at all that an official session of the Sanhedrin took place.<sup>1</sup>

<sup>1</sup> The authors named under *d.* on p. 16, *above*, belong to this category. Besides these, cf. ROSADI, *op. cit.*, p. 159: "The conviction was not a real sentence, but simply an indictment." DANIEL-ROPS speaks of a "decision to condemn Jesus" (p. 501). The most thorough effort to justify this view is that of BICKERMANN, *op. cit.*,

These authors generally assert that the evangelists themselves do not describe the final decision of the Jewish court as a death sentence.<sup>2</sup> In reply to this it must be established that at any rate Mark, whose narrative is of fundamental importance for the reconstruction of events, reports a Jewish death sentence. To be sure, he uses a somewhat peculiar expression: "And they all condemned him as liable to death" (14:64). But curious though this wording sounds, it surely means quite clearly that a condemnation has taken place (*κατέκριναν*) and that a death sentence had been passed. Hence, Mark does not mean to report a mere pronouncement of guilt. Another text in Mark confirms the fact that he actually has a real death sentence in mind. In 10:33 the evangelist makes Jesus prophesy that the chief priests and scribes, that is to say, the sanhedrists, "will condemn him to death."<sup>3</sup> Finally, when we consider with how little exactitude Mark expresses himself later in his report of the condemnation by Pilate (15:15), where it is definitely a matter of a death sentence, we will come to the conclusion that Mark actually characterizes with surprising clarity the decision of the Sanhedrin as a real death sentence.<sup>4</sup> ★

pp. 180-184. But compare also P. W. SCHMIDT, *Die Geschichte Jesu*, II (1904), 384: "Dass vom Synedrium diesmal überhaupt kein Todesurteil gefällt wurde, geht nebenher auch aus der historischen Unverständlichkeit der 'Gotteslästerung' hervor, wegen welcher Jesus verurteilt worden sein soll"; and GOGUEL, *op. cit.*, p. 426, according to whom the Sanhedrin merely ascertained that Jesus had spoken words punishable by death; it had given an experts' opinion (*avis*), but passed no sentence. P. BENOIT is more reserved, *Ang*, 20 (1943), 162, n. 3: "Il est permis de voir dans le séance du Sanhédrin une réunion délibérative qui n'avait pas à observer toutes les formes légales, et dans sa sentence finale une décision véritable, mais qui n'avait pas de soi valeur de condamnation formelle."

<sup>2</sup> GOGUEL, *op. cit.*, p. 426: "Aucune de ces textes n'exprime formellement l'idée d'une condamnation. Il n'y a pas autre chose qu'une déclaration de culpabilité." According to BICKERMANN, *op. cit.*, p. 183, Mark 14:64 should be translated: "Tous se prononcèrent contre lui comme ayant mérité la mort."

<sup>3</sup> The text is sound beyond a doubt. S. ZEITLIN, *Who Crucified Jesus?* (2nd ed., 1947), p. 173, asserts that some of the codices leave out the additional detail "to death" in Mark, and he regards this reading as the original version. But TISCHENDORF's *Octava* does not note a single manuscript with this omission.

<sup>4</sup> Cf. even J. WEISS, *Das älteste Evangelium* (1903), p. 315: "Es kann kein Zweifel sein, dass Markus ein formelles Gerichtsverfahren und eine rechtsgültige Verurteilung erzählen will." Similarly C. G. MONTEFIORE, *The Synoptic Gospels*, I (2nd ed., 1927), 361. V. TAYLOR, *The Gospel According to St. Mark* (1952), p.

The fact that the two other synoptics do not express themselves so definitely does not alter this fact.<sup>5</sup> But that Matthew also assumes a Jewish death sentence is shown in 27:3. When Jesus was led away to Pilate, Judas was seized with remorse, for he saw from this that his Master "was condemned" (κατεκρίθη).

Some commentators take the following stand: They admit that Mark (Matthew) tells of a formal trial ending in a death sentence, but assert that this narrative is historically incorrect.<sup>6</sup> It is obvious that such a thesis can only be justified if the strongest grounds exist for it. But the reasons put forward in this connection can, in no wise, be called conclusive. It is argued that the Sanhedrin was not at liberty to pass a death sentence because Jesus had not made any statement which could be interpreted as blasphemy, or again, that because the prerogative of a court of law had been completely withdrawn from the Sanhedrin in the matter of capital charges at that time.<sup>7</sup> But these grounds are in part incorrect and in part unproven. The only objection of any weight is the reference to the inclination of the early Church to emphasize excessively the responsibility of official Judaism for the death of Christ. This bias, so it is said,<sup>8</sup> which can be distinctly demonstrated from Justin to Augustine and later, must also be assumed to have existed in the primitive Church, and this explains the

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570, is more cautious: "The judgment *ἐνόχον εἶναι θανάτου* appears to express a judicial opinion or verdict rather than a sentence, probably because Mark is aware that the Sanhedrin was not able at this time to exact the penalty of death by stoning. Nevertheless, a formal judgment is expressed, and this confirms the opinion that Mark looks upon the gathering as a judicial court."

<sup>5</sup> Matt. 26:66: "And they answered and said: 'He is liable to death.'" Luke 22:71 passes over even this remark.

<sup>6</sup> Thus, for instance, J. WEISS, *op. cit.*, p. 315: "Nach jüdischem Recht ist das Verbrechen der Gotteslästerung erst erwiesen und das Leben verwirkt, wenn der Angeklagte bei seiner Lästerung den allerheiligsten Namen Gottes ausdrücklich ausgesprochen hat. Dies ist bei Jesus nicht der Fall. Mithin kann er nicht wegen Gotteslästerung formell zum Tode verurteilt worden sein." Likewise MONTEFIORE, *op. cit.*, p. 361. BICKERMANN, *op. cit.*, pp. 183 f., according to whom Mark in 14:64 does not mean to convey that a death sentence had been passed, sees only in 10:33 an incorrect statement on the part of the evangelist.

<sup>7</sup> Cf. previous note and Excursus VII.

<sup>8</sup> Cf., let us say, BICKERMANN, *op. cit.*, pp. 183 f.

efforts of the evangelists to add to the purely moral guilt of Judaism the added stamp of juridical guilt. But this argument also fails to convince. For, assuming that this bias already existed in the primitive Church, it would surely have shown itself most noticeably in the later gospels. But the opposite is the case. In his report of the proceedings before the Sanhedrin, Matthew leaves unpronounced the decisive cue word of his passion ("they condemned Him"), and only speaks in a later, less significant text of the condemnation. Luke describes the legal proceedings before the Sanhedrin, but neither here nor elsewhere does he mention the Jewish death sentence. And finally, the Fourth Evangelist actually passes over the Sanhedrin proceedings in complete silence. This is a clear proof that the primitive Church did not lay such very great weight on the juridical responsibility of the Sanhedrin. ★

2. According to Mark's account there can be no doubt whatever that the only ground for the death sentence passed by the Sanhedrin was the messianic self-testimony of Jesus, which was regarded as blasphemy. But various authors<sup>9</sup> maintain that Jesus was accused and convicted of seducing the people and of false prophecy as well as of blasphemy. With reference to the first of these two crimes, seducing the people, they quote Matt. 27:63, in ★

<sup>9</sup> J. SALVADOR, *Histoire des institutions de Moïse et du peuple Hébreu*, II (1828), pp. 76 f.; L. SAALSCHÜTZ, *Das mosaische Recht*, II (1853), p. 625; E. RENAN, *Vie de Jésus* (1883), p. 407; R. VON MAYR, *op. cit.*, pp. 296 f., DOERR, *op. cit.*, pp. 39-42; P. ROUÉ, *Le procès de Jésus* (1924), pp. 56 ff.; HUSBAND, *op. cit.*, p. 226; K. KASTNER, *Jesus vor dem Hohen Rat* (1929), pp. 10 f. The "enticer" (*mesith*), that is to say, one who leads another individual into idolatry, and the "corrupter" (*maddiah*) who, as member of a majority, leads that majority into apostasy, is punishable by stoning according to *Mishna Sanh.* VII 10. As this punishment is already prescribed in the O. T. (at least for the corrupter: Deut. 13: 7-12) it was definitely legally valid in the time of Jesus. This is proved, in fact, by the Damascus MS 12, 3, where it is laid down that the corrupter ("preacher of apostasy") shall be executed "according to the law dealing with necromancy," that is to say, with stoning, in accordance with Lev. 20:27. The assumption that Jesus was arraigned as a "refractory elder" is right off the mark. For Jesus was no "elder" (teacher of the Law), He did not oppose a legal judgment, and did not invite others to act against the Law, all of which, according to *Mishna Sanh.* XI 2 is to be understood under the term "refractory elder." Deut. 17:12 threatens such a one with death, and the *Mishna*, more explicitly, with death by strangling.

which the hierarchs call Jesus a "deceiver" (πλάνος), and John 7:12, in which part of the people say, "No, rather, he seduces the crowd"; and finally Luke 23:2, 5, where the sanhedrists denounce the Nazarene to Pilate as a man who is stirring up the people. Besides these texts of Scripture, certain accounts in the Talmud are recalled, according to which Jesus was executed as a perverter (*mesith*) of the people. As for the particulars in the Talmud, it has been shown already that these cannot be regarded as of historical value. The charge made before Pilate does not mean seducing in the religious sense, namely, leading into idolatry, but stirring up the people in the political sense; and the abusive name of "deceiver" used by the hierarchs for Jesus has no recognizable connection with the trial of Jesus at all (neither has John 7:12, 47). The crime of false prophecy seems likewise to have had nothing to do with the verdict, according to the narratives of the synoptics.<sup>10</sup> True, Jesus would seem to have been mocked as a pseudo prophet after His condemnation, but that does not necessarily imply that the verdict was founded on this specific charge. For Judaism imagined the future Messiah as also equipped with the gift of prophecy and the knowledge of hidden things, in fact very specially so. The mocking scene is strongly reminiscent of the strange rabbinical belief that the future Messiah would be able solely by his sense of smell to detect right and wrong, without the

<sup>10</sup> Opposing both J. WEISS, *op. cit.*, p. 312, and J. JEREMIAS, *Die Abendmahlsworte Jesu* (2nd ed., 1949), p. 44, and TWB, V, 899, n. 85. *Mishna Sanh.* XI 4: "A false prophet is one who prophesies something which he did not hear and which had not been said to him." *Mishna Sanh.* XI 1a prescribes strangulation for this crime; Deut. 13:5, on the other hand, merely states in a general way: "And that prophet or forger of dreams shall be slain . . . and thou shalt take away the evil out of the midst of thee. Cf. Deut. 18:20: "But the prophet, who being corrupted with pride, shall speak in my name things that I did not command him to say . . . shall be slain." Apparently the crime of pseudo prophecy was punishable by stoning in the time of Jesus; for the rooting out from the midst formula of Deut. 13:5 is to be found elsewhere linked with the threat of stoning, for instance in Deut. 21:21, the punishment of the rebellious son: "The people of the city shall stone him; and he shall die, that you may take away the evil out of the midst of you." One cannot make out for certain whether Peter and John (Acts 4-5) were charged as false prophets, or as corruptors of the people, or as both (G. HÖLSCHER, *Die Mischnatractate 'Sanhedrin' und 'Makko'* [1910], p. 113).

use of either his ears or his eyes.<sup>11</sup> Finally, the charge of magic<sup>12</sup> only turns up in occasional utterances of the enemies of Jesus during His public life (Mark 3:22; Matt. 9:34), and not at all in the legal proceedings. Hence we see that the assertion that another charge besides blasphemy was decisive in bringing about the Sanhedrin's death sentence, cannot be substantiated.

In what did Jesus' blasphemy consist in the view of the Sanhedrin? Definitely not in the utterance about the Temple, which, moreover, was not pursued further because of a lack of agreement among the witnesses; nor in speaking the name of God straight out, since Jesus avoided the name of God and used the term "Power" instead. No, He incurred the charge of blasphemy wholly and solely by His solemn affirmative to the high priest's question, i.e., by His confession of His messianic dignity. A whole series of commentators assert, on the other hand, that the Sanhedrin did not regard the claim of Jesus to be the Messiah as blasphemous, but rather His claim to divine attributes. This view emerges in two forms:

a. Many exegetes, and particularly Catholic ones, see in the acceptance by Jesus of the title "Son of God," a claim to divine attributes.<sup>13</sup> This is correct, inasfar as the designation "Son of God"

<sup>11</sup> BILLERBECK, I, 641; II, 439.

<sup>12</sup> See C. H. KRAELING, "Was Jesus Accused of Necromancy?" JBL, 59 (1940), 147-157. Necromancy is named side-by-side with seducing of the people in the Talmud paragraph (*Sanh.* 43a) and by Justin Martyr *Dialogue* 69. 7; cf. *Acta Pionii et soc.* 13; Origen *C. Celsum* i. 68; Jerome *Ep. 45 ad Ascellam*. *Mishna Sanh.* VII 11: "The necromancer is one who does a deed, but not one who only deceives the eyes." He is to be stoned according to *Sanh.* VII 4a. In Ex. 22:18, "Wizards thou shalt not suffer to live," the manner of death is not given, but as the crime of bestiality is threatened with death in v. 19, it would seem that stoning was also chosen for wizards.

<sup>13</sup> J. BELSER, *Geschichte des Leidens, etc.* (2nd ed., 1913), p. 312; B. BARTMANN, *Das Himmelreich und sein König* (1904), pp. 144 f.; J. SCHÄFER in SCHUSTER-HOLZAMMER, II (6th ed., 1906), 444; H. SCHUMACHER, *Die Selbstoffenbarung Jesu bei Matthäus 11, 27 (Lukas 10, 22)* (1912), pp. 197-202; K. KASTNER, *Jesus vor dem Hohen Rat* (1929), p. 111; U. HOLZMEISTER, ZkTh, 39 (1915), 335 f.; M.-J. LAGRANGE, *L'Évangile selon S. Marc* (1947), pp. 401 f.; D. BUZY, *S. Matthieu* (1935), p. 358; J.-M. VOSTÉ, *De passione et morte Iesu Christi* (1937), pp. 124 f., and "The Title 'Son of God' in the Synoptic Gospels," AER, 121 (1949), 18-33; D. J. SAUNDERS, "The Confession of Peter," TS, 10 (1949), 522-540;

implies in the mind of Jesus something immeasurably higher than the messianic idea of Judaism. But our task here is solely to ascertain how Caiphas understood the expression "Son of God" when he was questioning Jesus. He cannot have meant anything else than a messianic title. This is proved by the fact that in Caiphas' question "Son of God" is an apposition to "Messias"; for, after all, the high priest cannot have asked Jesus in the same breath about two things worlds apart (Messias and metaphysical Son of God).<sup>14</sup> Now, since the Messias of Jewish expectation was not Son of God in the metaphysical sense but a purely human being, the Sanhedrin cannot have understood Jesus' affirmative to the question of Caiphas to have implied attribution to Himself of divine rights and qualities.

Many commentators choose to see in the texts, John 5:17 f.; 10:33, the interpretation of Caiphas' question. Their argument is that if the sanhedrists had taken those statements to mean that Jesus made Himself equal to God, it is highly improbable that they would not have preferred precisely this important charge against Him.<sup>15</sup> To this the reply is: To interpret synoptic texts by John is highly dubious as a method; above all in problems as difficult as this, the separate gospels must be explained of themselves. But quite apart from this objection on grounds of principle, that solution proves untenable. If Caiphas had wished to question Jesus about His divine sonship in the Johannine sense, he would not have combined his question with the one about the messias-

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RICCIOTTI, *op. cit.*, pp. 600 f.; A. MANASSERO, *Ecce Homo* (1952), p. 106; G. DALMAN, *Worte Jesu*, I (1898), 236; Th. ZAHN, *Das Evangelium des Matthäus* (4th ed., 1923), pp. 705 f.; *Das Evangelium des Lukas* (4th ed., 1920), p. 693; G. WOHLBERG, *Das Evangelium des Markus* (3rd ed., 1930), pp. 363-367; I. H. LINTON, *The Sanhedrin Verdict* (1943), pp. 6-8; J. BIENECK, *Sohn Gottes als Christusbezeichnung der Synoptiker* (1951), p. 54.

<sup>14</sup> Only Luke makes two separate questions of Mark 14:61 (Luke 22:67 and 70), but here too "Christ" and "Son of God" are obviously interchangeable terms (W. MICHAELIS, *Zur Engelchristologie im Urchristentum* [1942], p. 190, n. 12; J. SCHMID, *Das Evangelium nach Lukas* [2nd ed., 1951], p. 274; M. MEINERTZ, *Theologie des NT*, I [1950], p. 171; cf. Luke 4:41.

<sup>15</sup> U. HOLZMEISTER, *ZkTh*, 39 (1915), 335; cf. A. KROPP, *Die Neue Ordnung*, 5 (1951), 102 f.

ship, which would have been quite meaningless in this case. In fact, he could not even have used the title Son of God alone, since this was ambiguous, without defining it more closely by reference to earlier self-testimonies of Jesus, by asking, let us say: "Art thou really, as thou hast already asserted, the Son of God like unto Him?" Or "Dost thou stand by thy former statements?" (i.e., John 5:17; 10:30). The high priest's question would, however, have been quite unambiguous only if it had evaded the erroneous title, Son of God, completely and asked directly: "Do you claim to be equal to God?" (John 10:33b; 5:18b). The view that Caiphas' question was deliberately ambiguous and a kind of verbal trap<sup>16</sup> is improbable in view of the fact that, for Caiphas, all depended on a definite conviction of the Accused. It is an impossible theory, too, in view of the attitude of Jesus, as it would compel one to assume that Jesus had innocently fallen into the trap set for Him by His cunning inquisitor. Jesus answers unambiguously: "I am" (Mark 14:62a). This unambiguous answer presupposes that the question put to Him was unambiguous too; that it did not refer to two different things. The reference of Jesus to His second coming (Mark 14:62b) does not refer to a second subject of Caiphas' question, but is a declaration of how and when the messiahship He has just confessed will be made manifest. Why Caiphas did not revert to former declarations of His sublime identity made by Jesus, we cannot ascertain. But that does not prevent us from assuming that such declarations by Jesus formed the subject of the evidence of those witnesses whose testimony was found useless because it was not unanimous (Mark 14:56). The fact that those earlier declarations of divinity are not mentioned in the narratives of the trial does not warrant the conclusion that the particulars referred to in John are unhistorical or inexact. There is also in the synoptic account of the public life of Jesus a self-testimony which could well have served as a charge of blasphemy, and which nevertheless plays no detectable part in

<sup>16</sup> P. GAECHTER, ZkTh, 54 (1930), 605.

the trial. It is, namely, the claim of Jesus' to have power to forgive sins, Mark 2:5b-10. The fact that this scene may not form a historical unit with the miracle of healing, is no reason for denying its historicity.

b. Now, there are also some scholars who interpret the title, Son of God, as a title of the Messiah, but see in the declaration of Jesus concerning His second coming a profession of metaphysical sonship of God, and take this to be the ground for the Jews' charge of blasphemy. Georg Aicher, who has emphatically defended this interpretation, justifies it as follows: According to St. Matthew's account, which is regarded as the oldest one, Jesus does not claim the title of Messiah. On the contrary, He replies to the high priest's question with the words: "Thou hast said it," thereby refusing to answer the question, and giving the questioner only His assertion instead. But then Jesus voluntarily professes His supernatural messianic ideal, the sonship of God in the metaphysical sense, and only upon this does His condemnation for blasphemy follow.<sup>17</sup> The basic error of this view lies in the assertion that Mark's text is secondary as compared with Matthew's. When Aicher asserts in proof of this that in Mark, in contrast to Matthew, the announcement of His second coming, which follows the profession of His messianicship, is not a corroboration of the former, he is not correct, as we have already seen. For the text about the second coming specifies and particularizes when and how the messianicship, just claimed, will be made public in an overwhelming manner. Whatever may be the explanation of why Matthew uses the words "Thou hast said it" instead of the unambiguous affirmative of Mark's version, Mark's text must be the basis in reconstructing the historical wording, in any case. Moreover, the form of words in Matthew is certainly not to be

<sup>17</sup> G. AICHER, *Der Prozess Jesu* (1929), pp. 58-75. Cf. also R. A. HOFFMANN, "Das Wort Jesu von der Zerstörung und dem Wiederaufbau des Tempels," *Heinrici Festschrift* (1914), pp. 130-139: "Nach dem Quellenbefund sind wir dann gehalten, als das für die Verurteilung ausschlaggebende Moment die Erklärung Jesu von seinem demnächstigen Sitzen zur Rechten Gottes anzusehen" (p. 137); H. VAN DER LOOS, *Jesus Messias-Koning* (1942), p. 184; GOGUEL, *op. cit.*, p. 429.

understood as denial or repudiation, but, on the contrary, as confirmation. Aicher lays undue weight on the pronoun "thou" (hast said it); he construes it as a contradistinction to the declaration about His second coming which follows. But if that were so, the subject "I" in the words "Nevertheless, I say to you," would have an accent which the Greek text proves is not the case (the pronoun *ἐγώ* is missing). Finally, Aicher's hypothesis breaks down on the fact that the two main declarations contained in the text about His coming again, namely, the sitting at the right hand of the Power and the coming upon the clouds of heaven, have also been applied by the Jews to their humanly conceived Messiah.<sup>18</sup>

One could more easily feel tempted to see the blasphemy in Jesus prophesying that He would come again as judge of the world.<sup>19</sup> According to a view widely current and amply documented in Judaism, it is God and God alone who holds judgment.<sup>20</sup> In Jesus' threat that He would come back as the judge of the world foretold by Daniel, the sanhedrists could not fail to see a claim which was more than a messianic one—an arrogation to Himself of a right reserved to God alone. The difficulty in the way of this interpretation is, however, that in His reply to Caiaphas' question, Jesus says nothing about acting as judge, in contrast, for instance, to Matt. 25:31-46. The evangelists failed to mention just what would have made His declaration blasphemous. Neither can it be said that the office of judge belonging to the Son of Man, when He comes again, with its allusion to Daniel

<sup>18</sup> See *above* p. 109, n. 50.

<sup>19</sup> O. HOLTZMANN, *Leben Jesu* (1901), p. 375: "Man erklärte es für eine Gotteslästerung, dass ein Frevler behauptete, Gott werde ihm den Platz zu seiner Rechten einräumen und das Amt des künftigen Weltenrichters übertragen"; Fr. TILLMANN, *Das Selbstbewusstsein des Gottessohnes* (1921), p. 71; "Jesus beschränkt sich nicht darauf, die an ihn gestellte Messiasfrage zu bejahen, sondern er setzt sich zur Rechten Jahwes auf den Thron des Weltenrichters. Das ist es, was der Hohepriester eine Gotteslästerung nennt." Similarly, INNITZER, *op. cit.*, p. 160; K. PIEPER, *Heimat und Leben unseres Herrn Jesus Christus* (1949), pp. 184 f.; G. MÜLLER, *Der Weg nach Golgotha* (1949), p. 81; J. SCHILDENBERGER, *Vom Geheimnis des Gotteswortes* (1950), p. 167; F. M. BRAUN, *Jesus Christus* (1950), p. 95.

<sup>20</sup> P. VOLZ, *Die Eschatologie der jüdischen Gemeinde im ntl. Zeitalter* (2nd ed., 1934), pp. 274 f.

7:13, is implicitly asserted, for the Son of Man in Daniel has nothing to do with the Judgment. He only emerges after it, to take over the lordship of the world which has been given to Him by God's decree.<sup>21</sup> The Son of Man first appears as judge of the world in the metaphorical discourses of Enoch.<sup>22</sup> Rabbi Akiba also (d. c. 135 A.D.) pictured the Messiah beside God as judge on the Day of Judgment, but without making him the equal of God.<sup>23</sup> Thus, the following dilemma arises: Either the Jews in the time of Jesus were acquainted with the idea of a Son of Man-Messias who would judge the world—in which case they could well have understood the words of Jesus about coming again on the clouds of heaven in this sense but could not have deemed this a more than messianic claim—or that idea was unknown to them. But in this case too, it would have been far from their thoughts to construe the words of Jesus as a claim to the divine office of judge.<sup>24</sup>

It would seem that one might only give a more than messianic meaning to the title, "Son of God," in Caiphas' question if there

<sup>21</sup> Cf. VOLZ, *op. cit.*, p. 215.

<sup>22</sup> 1 Enoch 69:27; 62:8; 55:4; 61:9, etc. VOLZ, *op. cit.*, pp. 214 f.

<sup>23</sup> Documented in VOLZ, *op. cit.*, pp. 275, 225.

<sup>24</sup> The view that Caiphas asked whether Jesus was the Messiah and that Jesus was condemned by the Sanhedrin because of His reply in the affirmative, has been supported by the following Catholic scholars, among others: P. SCHANZ, *Commentar über das Ev. des hl. Marcus* (1881), p. 398; Fr. TILLMANN, *BiZ*, 8 (1910), 260-262; B. KLÖVEKORN, *BiZ*, 9 (1911), 272-276; H. HÖFFL, *Die Stationen des hl. Kreuzwegs in Jerusalem* (1914), p. 13; J. SICKENBERGER, *Leben Jesu* (1932), § 250; J. SCHMID, *Das Evangelium nach Markus* (3rd ed., 1954), pp. 283 f.; W. GOOSSENS, "De sensu locutionis 'Filius Dei' in confessione S. Petri et in quaestione Synedrui," *Collationes Gandavenses*, 28 (1945), 61-85; M. MEINERTZ, *Theologie des NT*, I (1950), 170 f. ("Der Messiasanspruch ist also die eigentliche Ursache des Kreuzestodes"); but cf. also *Das Heilige Land*, 83 (1951), 10-12. Regarding R. REITZENSTEIN's thesis that Jesus was condemned to death for His confession of faith in the "Urmensch," (*Das mandäische Buch des Herrn der Grösse* [1919], pp. 67-70), cf. the criticism of Rudolf BULTMANN, *Geschichte der synoptischen Tradition* (2nd ed., 1931), p. 292, n. 1. The Stockholm Rabbi Gottlieb KLEIN thought that Jesus had committed a blasphemy in the eyes of His enemies because He had pronounced the hidden name of God. This was *Ani we-Hu*, and with this word Jesus had answered the high priest—in Hebrew (*Der älteste christliche Katechismus und die jüdische Propagandaliteratur* [1909], pp. 55 ff.). In this KLEIN was probably inspired by the *Toledoth Jeshu*, cf. G. LINDSKOG, *Die Jesusfrage im neuzeitlichen Judentum* (1938), p. 293.

was reason to assume that Mark's report of that question is not in the historical wording but in a free paraphrase. In this case, the expressions put into the mouth of the high priest could have been used in their Christian meaning. In the primitive Church, entitling Jesus "Son of God" undoubtedly implied a confession of His consubstantial divine sonship. Mark himself also knows and uses the title in this sense (for instance, in 1:1). Therefore, it would not be inconceivable that Mark, in making Caiphas use the title, "Son of God," meant to convey that the high priest had asked Jesus whether He dared to lay claim to divine dignity. Certainly, the preceding title "Christ" presents a difficulty here. As this word means "Messias" and the expression which follows it, "Son of the Blessed One," is in apposition to "Messias," it seems at first to be hardly admissible to advocate ascribing to the title, "Son of God" a more than messianic meaning. But this difficulty is not insuperable either. For it is open to doubt whether "Christ" really meant only "Messias" in early Christian terminology and had not a very much richer meaning.<sup>25</sup> Therefore, this possible explanation of our text, which makes the alleged blasphemy of Jesus consist in claiming divine qualities, must not be entirely ruled out. The main difficulty in the way of finding this explanation satisfying is the striking fact that elsewhere Mark manifestly keeps to the historically true or at least historically possible wording wherever he makes people designate Jesus, and avoids all terminological anachronisms.<sup>26</sup> Precisely in 14:61 he seems to be conscious that the speaker is a Jew, for he makes him use the circumlocution "the Blessed One" instead of the name of God. So the interpretation that Caiphas asked whether Jesus was the Messias and that Jesus answered with a solemn affirmative will deserve preference after all, the more so since the behavior of Caiphas and his

<sup>25</sup> Cf. D. J. SAUNDERS, "The Devil and the Divinity of Christ," TS, 9 (1948), 536-553; also TS, 10 (1949), 522-540.

<sup>26</sup> The scribes and the people call Jesus "Son of David," "King of Israel," "Prophet," etc., i.e., they do not make use of the Christian missionary language; cf. F. GUENSER, "La confession de Saint Pierre," ETL, 4 (1927), 561-576, esp. 561.

colleagues cannot be said to be psychologically and juridically incomprehensible in the light of this interpretation.

3. If one compares the Sanhedrin trial of Jesus detail-by-detail with the trial procedure outlined in the Mishna, one gets the impression that the sanhedrists committed a whole series of irregularities. \

a. The following facts are manifestly not in accordance with the Mishna:

According to the Mishna, trials on capital charges may only be carried out by day.<sup>27</sup> Jesus was tried at a night session, and condemned toward daybreak. It was expressly forbidden to hold court trials on the eve of the Sabbath or of a feast.<sup>28</sup> As the Jewish day was reckoned from sundown and the day of Jesus' death was quite definitely a Friday, the night sitting of the Sanhedrin took place on the eve of the Sabbath and, according to John, at the same time, on the eve of a feast, namely, the Passover. (According to the synoptics it fell on the day of Passover itself, when naturally it was still more unlawful to hold a trial.)<sup>29</sup> It was forbidden to pronounce a death sentence earlier than the day after the trial.<sup>30</sup> Jesus was sentenced straight away at the close of the night sitting. If a second sitting really did take place in the morning, it fell on the same "day" as the night proceedings.

According to the Mishna, the regular meeting place of the Sanhedrin was the "Hewn Stone Hall" in the inner forecourt of the Temple;<sup>31</sup> according to particulars in the Talmud it was a "market hall" (from about 30 A.D.);<sup>32</sup> but the proceedings against Jesus took place in the house of Caiphas.

According to the rules of the Mishna, Jesus definitely could not have been condemned as a blasphemer since He had not pronounced the name of God.<sup>33</sup>

<sup>27</sup> *Sanh.* IV 1h.

<sup>28</sup> *Sanh.* IV 1h.

<sup>29</sup> *Beza* V 2.

<sup>30</sup> *Sanh.* IV 1h.

<sup>31</sup> *Sanh.* XI 2b.

<sup>32</sup> Cf. *Excursus* III.

<sup>33</sup> *Sanh.* VII 5a.

b. It is beyond a doubt that the proceedings against Jesus departed from the rabbinical rules in the following points: The principle that "capital charges open with a verdict of 'not guilty' and not with a verdict of 'guilty'"<sup>34</sup> appears to have been ignored in that witnesses for the defense were not heard at all.

In properly conducted public trials, an advocate or defender (*Baal Rib*) was generally at the disposal of the accused.<sup>35</sup> It does not appear that such a person acted in the trial of Jesus.

The witnesses in a capital charge had to be solemnly warned and admonished before being examined.<sup>36</sup> It is, to say the least, uncertain that this was done in the case of the witnesses at the trial of Jesus. Nor is there any indication that the false witnesses were called to account. Whoever bore false witness was supposed to suffer the punishment prescribed for the crime of which he had falsely accused another.<sup>37</sup>

It was not permissible for witnesses to take part in the passing of a sentence.<sup>38</sup> At this rate, the members of the Sanhedrin, as witnesses of the alleged blasphemy, could not validly have passed sentence; at least two of them should have been excluded from the council composing the court in order to validly function as witnesses. Mark's account does not tell us that this was done in the case of Jesus.

In capital trials, the younger members of the Sanhedrin had to record their vote before the older ones, in order to make sure that they would not be influenced by the decision of their elders.<sup>39</sup> But here Caiphas first announced publicly what he himself thought about the Prisoner's guilt, and only afterward allowed the others to cast their vote.

According to Mark, all the members of the Sanhedrin who were

<sup>34</sup> *Sanh.* IV 1c.

<sup>35</sup> J. VARGHA, *Die Verteidigung in Strafsachen* (1879), p. 7.

<sup>36</sup> *Sanh.* IV 5.

<sup>37</sup> *Makkot* I 1-9.

<sup>38</sup> *Sanh.* V 4b.

<sup>39</sup> *Sanh.* IV 2a.

present voted for the death sentence. But the Gemara<sup>40</sup> contains the curious provision that the accused should go free if all the judges vote him guilty (the lawgiver assuming that in such a case the court must be prejudiced). However, the Mishna certainly contains no such provision, and it is therefore most improbable that it was known or in force in the time of Jesus.

c. Many scholars have, quite unjustly, declared the proceedings against Jesus to have been inconsistent with Mishnic Law in the following points:

Regarding the hearing before Annas, it is sometimes objected that this was contrary to the principle of Jewish law which held that no single individual could act as judge.<sup>41</sup> But Annas examined Jesus, not in his capacity of judge, but unofficially.

Representatives of the incompetence theory deny the competence of the court. But Mark's account, according to which all the chief priests, elders and scribes formed the court, places it beyond all doubt that the Great Sanhedrin met to deal with the case of Jesus in sufficient numerical strength to form a legal court.

It is asserted that the rule that witnesses must come forward voluntarily was not adhered to,<sup>42</sup> but this cannot be proved. On the contrary, there is reason to assume that the witnesses were partisans of the sanhedrists and therefore were very glad to seize the opportunity of bearing witness against Jesus.

A blasphemer could only be convicted, as a rule, if he had been previously warned by two witnesses of the penal consequences of the blasphemy.<sup>43</sup> But the fact that there is no mention of such a warning in the trial of Jesus does not warrant the assumption that an infringement of the law took place, for a warning was not requisite in the case of one versed in the Law—and Jesus was regarded as such.<sup>44</sup>

<sup>40</sup> BILLERBECK, I, 1022; K. SCHUBERT, *Die Religion des nachbiblischen Judentums* (1955), p. 27.

<sup>41</sup> *Pirke Aboth* IV 8.

<sup>42</sup> J. BELSER, *op. cit.*, p. 304.

<sup>43</sup> BILLERBECK, I, 1018.

<sup>44</sup> BILLERBECK, I, 1019.

Some scholars see in Caiphas' question a breach of the rule that the judge may not also be prosecutor. But in merely putting his question to Jesus, Caiphas is not assuming the role of prosecutor. Only Matthew's version of the question could possibly be taken as containing an illegality. The formula of adjuration which Matthew puts in the mouth of the high priest looks like the administration of an oath to the Accused; but according to Jewish Law it would not have been permissible to place Jesus on oath.<sup>45</sup> Apparently, however, the formula is not to be regarded as the administration of an oath, but as "an urgent challenge which it is assumed will be resisted";<sup>46</sup> otherwise, Jesus would have had to assent to the adjuration with an "Amen." This interpretation is also supported by Mark's narrative, in that Mark does not mention the adjuration at all.

A view frequently encountered is that it was not admissible to condemn Jesus on the basis of His own admission, as this was forbidden by Jewish Law.<sup>47</sup> To be sure, the principle *lex nostra neminem condemnat mortis propria ipsius confessione* is not to be found categorically stated until Maimonides (twelfth-thirteenth century) but, as Abrahams has shown, it corresponds fully with the spirit of the Mishna.<sup>48</sup> Nevertheless, it is not admissible to speak of a breach of the Law by the Sanhedrin on this score. For the answer of Jesus to the question put by Caiphas was not the admission of a crime committed but, in the view of the judges, a crime in itself, namely, blasphemy.

Husband speaks very indignantly of certain scholars who, as he says, search the trial of Jesus as eagerly for irregularities as the Argonauts of California once searched for grains of gold.<sup>49</sup> As a matter of fact, certain scholars have often gone much too far in this respect. It is said that no less than twenty-seven different

<sup>45</sup> BILLERBECK, I, 1005 f.

<sup>46</sup> AICHER, *op. cit.*, p. 63; cf. 3 Kings 22:16; regarding acceptance of the adjuration with "Amen," cf. Num. 5:22; *Schebu* 3, 10 f.; 4, 3.

<sup>47</sup> Similarly VOSTÉ, *op. cit.*, p. 141.

<sup>48</sup> I. ABRAHAMS, *Studies in Pharisaism and the Gospels*, II (1924), 132 f.

<sup>49</sup> HUSBAND, *op. cit.*, p. 129.



breaches of the legal code have been alleged.<sup>50</sup> Actually the number of real departures from the Mishna Law is considerably less than this, as shown above. Nevertheless, these, taken all in all, are of such a serious nature that one must ask oneself whether they did not perhaps render the proceedings null and void. The fact that the Mishnic Code in question lacks sanction, does not in itself justify a reply in the negative. It would be more reasonable to put forward, in exoneration of the Sanhedrin, that the principle that extraordinary circumstances at any given time justify extraordinary measures was not unknown to the Old Sanhedrin.<sup>51</sup> But even then one would not be able to spare the Sanhedrin the reproach of very serious infringement of the Law.

Various attitudes have been adopted toward this proven fact. One group of scholars, of whom the Italian jurist Rosadi may justly be regarded as the spokesman in the present century, regards the Sanhedrin trial as an illegal proceeding from beginning to end.<sup>52</sup> The fact alone that the Sanhedrin obviously adhered

<sup>50</sup> HUSBAND, *ibid.*; cf. T. G. BUNCH, "*Behold the Man*" (1946), p. 47: "A series of more than a score of illegal acts."

<sup>51</sup> BILLERBECK, II, 821.

<sup>52</sup> ROSADI, *op. cit.*, pp. 93-106, 123, 130, 157, and elsewhere. The classical representative of this theory in the last century was the celebrated lawyer Maître André M. DUPIN, S. In 1828 he wrote a treatise against SALVADOR, *Jésus devant Caïphe et Pilate*, which was printed as an appendix to the second edition of SALVADOR's *Histoire des institutions de Moïse et du peuple Hébreu*, IV (Brussels, 1830), 137-210. SIMON GREENLEAF, a professor of Harvard University and one of the greatest American jurists of last century, deserves to be named beside DUPIN. In his book, *An Examination of the Testimony of the Four Gospels*, published in Boston in 1846 and frequently reprinted, he calls the Crucifixion of Jesus "a cruel murder, perpetrated under the pretence of a legal sentence, after a trial in which the forms of law were essentially and grossly violated" (as quoted by I. H. LINTON, *The Sanhedrin Verdict* [1949], p. 59). The brothers LÉMANN, both former rabbis who became Catholic priests, share DUPIN's view in their book, *Valeur de l'assemblée qui prononça la peine de mort contre Jésus-Christ* (Paris, 1876). The illegality of the Sanhedrin trial is also strongly emphasized by CH. HOFFMANN, *Le procès de Notre-Seigneur Jésus-Christ devant le Sanhédrin et Ponce Pilate* (1876), p. 199; A. T. INNES, *The Trial of Jesus Christ* (1899), pp. 58 f. and ExpT, 10 (1898/9), 522; A. KLARMANN, *The Trial of Jesus Before Pilate, A Study of Judicial Arrogance and Pharisaical Justice* (1906), *passim*; S. BUSS, *The Trial of Jesus Illustrated from Talmud and Roman Law* (1906), *passim*; W. M. CHANDLER, *The Trial of Jesus*, I (1909), 226 ff., 280 ff; Lord SHAW of Dunfermline, *The Trial of Jesus Christ* (1928), p. 24 and elsewhere;

strictly to the legal standards in the hearing of witnesses precludes acceptance of this view. Besides, one must consider the simple fact that the Sanhedrin would not have dared to pass on to the Roman governor a trial conducted in a manner as illegal as has been alleged.

Others, again, make the departures from legal procedure an excuse for casting suspicion on the evangelists as reporters. Convinced that no Jewish court could possibly have disregarded so flagrantly the rules of its own legal code, they hold all the gospel accounts to be anti-Jewish inventions—Jewish authors especially so.<sup>53</sup> In refutation of this petty view, the English Jew Montefiore has aptly remarked that there have been illegal trials in every age, yet it does not occur to anyone simply to reject the reports of such trials as inventions.<sup>54</sup> Moreover, what the gospels tell of

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LINTON, *op. cit.*, pp. 25 f.; R. BESNIER, "Le Procès du Christ," RHDr, 18 (1950), 200 f.; A. MANASSERO, *Ecce Homo* (1952), pp. 106–108; BUNCH, *op. cit.*, 45–47, 50–52 (p. 47: "The greatest travesty of justice in all the annals of mankind"). This is also the traditional Church standpoint, cf. J. SCHÄFER in SCHUSTER-HOLZAMMER, II (6th ed., 1906), 444, n. 6, who speaks of "the utter lawlessness of this trial, even regarded according to Jewish law"; G. MÜLLER, *Der Weg nach Golgotha* (1949), pp. 82 f. (p. 82: "Über alle gesetzlichen Bestimmungen hat sich der Hohe Rat im Prozess Jesu einfach hinweggesetzt"; p. 83: "Wo in der Geschichte der Rechtsprechung gibt es eine grössere Verletzung des Strafgesetzbuches bei einer einzigen Gerichtsverhandlung?"); DANIEL-ROPS, *op. cit.*, p. 491 and elsewhere. (On p. 491 he speaks of "that mixture of formality and illegality which characterizes the whole affair.") DROSSAART BENTFORT, *op. cit.*, p. 50: "Het Sanhedrin heeft het recht verkracht! Andere woorden zijn voor een dergelijk 'proces' en een dergelijke 'bewijs' voering niet te vinden." BUCHHEIT, *op. cit.*, p. 203: "In der Verfahrensweise des Hohen Rates liegt unbestreitbar ein Missbrauch der Rechtsvorschriften. Gesetz und Strafprozessordnung gelten nichts. Nur List und Gewalt entscheiden." (Cf. also "Gutachten über die Aussichten eines Wiederaufnahmeverfahrens," pp. 262–267.)

<sup>53</sup> Cf., for instance, M. HYAMSON, JQR, 11 (1920/1921), 88–97; W. VON HAUFF, *op. cit.*, p. 279; H. E. GOLDIN, *The Case of the Nazarene Reopened* (1948), pp. 398–457; P. VAN PAASSEN, *op. cit.*, pp. 144–148. Further, K. LIPPE, "Der Prozess Jesu," *Das freie Wort*, 12 (1912/13), 192; A. DREWS, *Das Markus-Evangelium* (2nd ed., 1928), pp. 331 f.; FR. LIPSIUS, *Leipziger Neueste Nachrichten*, 176 (June 24, 1928) replying to E. GOTTSCHLING's article, "Die rechtliche Seite der Verurteilung Jesu Christi, Ein politisches Fehlurteil unter dem Druck eines Terrors," *ibid.*, 172 (June 20, 1928).

<sup>54</sup> C. G. MONTEFIORE, *The Synoptic Gospels*, I (2nd ed., 1927), 351. Similarly, ALBERT SCHWEITZER, *Geschichte der Leben-Jesu-Forschung* (5th ed., 1933), p. 439, n. 1.

the rejected witnesses definitely does not look like an anti-Jewish invention.

Latterly the American Jew Solomon Zeitlin<sup>55</sup> has tried to explain in another way the alleged irregularities in the proceedings against Jesus. He assumes that there were two Sanhedrins functioning in Jerusalem in the time of Jesus, of which one was competent to deal with purely religious matters while the other constituted the highest native governmental and legal authority. The latter body, the political Sanhedrin, was not permitted to pass any sentences under the Roman occupation, and therefore was not bound to the rules of legal procedure. It was this Sanhedrin, he maintains, which had examined Jesus and then handed Him over to the Roman tribunal.

To begin with, this view is contrary to the statement in St. Mark's Gospel that the Sanhedrin passed a death sentence. Moreover, the majority of scholars are now convinced that the view first mooted by Adolf Büchler,<sup>56</sup> that two Sanhedrins existed, is an unsuccessful effort to reconcile the rabbinical accounts of the great Beth-Din with the accounts of the Sanhedrin in the gospels and Josephus. Büchler's view has been supported wholeheartedly only by Jacob Z. Lauterbach, and with reservations by Israel Abrahams;<sup>57</sup> while Gustav Hölscher, Samuel Krauss, G. A. Barton and C. G. Montefiore reject his hypothesis emphatically.<sup>58</sup>

In the opinion of Ernst Bammel the difficulties disappear once one decides to look at the problem, not from the legal, but from the frankly political angle. During the pontificate of Caiphas, efforts to defeat the ends of justice were the order of the day, as the Talmud's indignant judgment on that high priest proves, he

<sup>55</sup> *Who Crucified Jesus?* (2nd ed., 1947), pp. 163-166, 228-237.

<sup>56</sup> *Das Synedrium in Jerusalem und das grosse Beth-Din in der Quaderhalle des jerusalemischen Tempels* (1902), *passim*.

<sup>57</sup> J. Z. LAUTERBACH, *Jewish Encyclopedia*, XI, 42; ABRAHAMS, *op. cit.*, p. 136.

<sup>58</sup> G. HÖLSCHER, *Die Mischnatraktate 'Sanhedrin' und 'Makḥot'* (1910), pp. 22 f.; S. KRAUSS, *Sanhedrin-Makḥot* (1933), pp. 21 f.; G. A. BARTON, *JBL*, 42 (1922), 206; MONTEFIORE, *op. cit.*, p. 358. W. N. NEWTON, in particular (*CBQ*, 5 [1943], 232-234; and 6 [1944], 230-235), contests the views of ZEITLIN; likewise N. B. STONEHOUSE, "Who Crucified Jesus?" *WTJ* (May, 1943), 137-165.

says. In the case of Jesus, too, one could not expect such a man to proceed on principles of justice, but only to act on considerations of expedience. Caiphas had seized upon the case of Jesus and carried it through without consideration for legalities because on the one hand, by condemning Jesus, he could improve his relations with the Pharisees who, as nationalists, disliked him for his support of the Romans, and on the other hand, because Jesus, who had put His finger on the shady business going on in the Temple forecourt when He had driven the moneychangers from the Temple, had become a dangerous person in the eyes of the high-priestly caste, to whom these moneychangers' halls belonged.<sup>59</sup> This interpretation is not satisfying either. For though the common enmity toward Jesus may have induced the Pharisees to cooperate to some extent with the otherwise-hated Caiphas, it is surely difficult to imagine, in view of their pedantic fidelity to the Law, that they would have lent themselves to such a fantastic number of infringements of the Law in the matter.

Many of the more recent authors believe they find the solution of the puzzle in the assumption that the night proceedings against Jesus did not constitute a trial at all in the true sense. Many of them hold that it was a sham trial staged by some fanatical priests. There can be no question of this; the proceedings were undoubtedly carried through before a competent bench of judges. A more plausible assumption is that a competent Sanhedrin did indeed assemble, not to sit in judgment, however, but only to procure material, by a preliminary examination, for the charges to be preferred later before the procurator.<sup>60</sup> This view, which is defended particularly by Husband with formidable scholarship, is shaken to its foundations by Lietzmann's laconic remark:<sup>61</sup> "In Mark 14:64 there is a verdict, therefore what went before is a trial." Husband overlooked the fact that the alleged irregularities also

<sup>59</sup> E. BAMMEL, "Kaiphas und der Prozess Jesu," *Neue Presse* (March 3, 1951).

<sup>60</sup> See *above* pp. 16 f.

<sup>61</sup> ZNW, 31 (1932), 84.

allow of another explanation; and it is just this one which may well be the only correct one.

The representatives of the views enumerated up till now assume either explicitly or implicitly that the legal rules in the Mishna concerning the Sanhedrin were in operation in the time of Jesus. This assumption cannot be proved correct.<sup>62</sup> The Mishna was codified about 200 A.D. by Rabbi Jehudah ha-Nasi, and reflects the conditions which obtained in the second century, as can be seen from a whole series of its separate regulations. After the downfall of the Jewish state and institutions in the year 70 A.D., the Sanhedrin of Jerusalem had ceased to exist. It was then replaced by the Court of Jamnia, the so-called "Beth-Din." When the Mishna speaks of the Sanhedrin, it has in mind primarily or, at least, often this later institution, which definitely was not identical with the Old Sanhedrin. The council of scribes meeting at Jamnia enjoyed the highest respect of the masses, it is true, but it did not have criminal jurisdiction as the Old Sanhedrin had. Despite this, it devoted its energies ardently and undeterred to the study and perfecting of the Law, including the criminal law. In fact, it would appear that efforts were made at times to give practical effect to the Jewish theories of criminal jurisprudence, even without the authorization of the Roman authorities.<sup>63</sup> In the Old Sanhedrin of Jerusalem the Sadducees, who had their own penal code, continued to make their influence felt side by side with the Pharisees, but the court of Jamnia, on the other hand, was a council of scribes of the purely pharisaic school of thought in legal

<sup>62</sup> Doubts as to whether the ordinances recorded in the Mishna Tractate *Sanhedrin* were already binding on the Sanhedrin of the time of Jesus have been expressed by the following, among others: E. MEYER, II, 452 n. 1; BÜCHSEL, *op. cit.*, p. 111; RICCIOTTI, *op. cit.*, pp. 597 f. Cf. also BICKERMANN, *op. cit.*, p. 174, who speaks, it is true, of a "question insoluble."

<sup>63</sup> Cf. SCHÜRER, I, 656-659; Origen, *Epist. ad Africanum* 14 (PG II, 81 f.): "Even nowadays, when the Romans reign and the Jews have to pay them the two drachmas tax, the Ethnarch (i.e., the Patriarch of Tiberias), insofar as the Emperor permits, is so powerful among them that he differs in nothing from a king of the people. Indeed, they even hold legal trials secretly according to the [Jewish] Law, and many are condemned to death without a general authority but also with the matter remaining hidden from the ruler."

matters; for sadduceeism had gone down with the destruction of the Temple. It has been pointed out even by Schürer that these two institutions must be clearly distinguished the one from the other.<sup>64</sup> The thesis that the Mishnic criminal code is essentially the product of academic speculation and does not allow of any a posteriori conclusion regarding the actual conditions prevailing in the time of the second Temple was advanced explicitly for the first time, with a wealth of documentation, by the English Mishna scholar, Herbert Danby.<sup>65</sup> The objections brought forward against it by the Cambridge Talmud expert, Israel Abrahams, show, it is true, that the Mishna may well contain old regulations too, but they do not in any way disprove the fundamental correctness of that thesis. Following up the arguments of Danby, we shall demonstrate in a positive manner in Excursus VI that the Sanhedrin, in the time of Jesus, was bound to the sadducean criminal law.

Hence we see that nothing can be proved from the Mishna concerning the question of the legality or illegality of the Jewish proceedings against Jesus. True, it can be assumed of some of its provisions, namely, those ones already contained in the Old Testament, that they were recognized by the Sadducees also in the time of Jesus. Among these was the rule that a capital crime must be attested by at least two witnesses, and this rule was actually adhered to, as already mentioned. One may ask whether the prohibition of legal proceedings on feast days was one of them or not. But apparently this prohibition was less strictly enforced than the prohibition on holding courts on the Sabbath; for only this latter prohibition, which naturally is already laid down in the Old Testament, is shown by contemporary documents to be strictly binding—directly by Philo and indirectly by Josephus,<sup>66</sup> who tell us that according to an edict of the Emperor Augustus, Jews must

<sup>64</sup> SCHÜRER, II, 196 f.; likewise HÖLSCHER, *op. cit.*, p. 22.

<sup>65</sup> H. DANBY, "The Bearing of the Rabbinical Criminal Code on the Jewish Trial Narratives of the Gospels," *JThSt*, 21 (1919/20), 51-76. DANBY'S view is shared by G. F. MOORE, *Judaism in the First Century of the Christian Era*, II (1927), 187, and J. LEBRETON, *DictB*, Supplement IV (1949), 1052.

<sup>66</sup> Philo *De migr. Abrahæ* 16. § 91; Josephus *Antiquities* xvi. 6. 2. § 163; xvi. 6. 4. § 168.

not be forced to appear before courts on the Sabbath. Therefore it is quite thinkable that it did not seem to the sanhedrists an infringement of an important rule to start a legal trial even on the night of the Pasch.<sup>67</sup> Besides, they could plead that circumstances rendered an immediate handling of the case urgently necessary. But probably the trial of Jesus did not take place on the Feast of Passover at all, as one would infer from the synoptic gospels, but on the eve of the Passover, as John reports.<sup>68</sup> If this is so, that difficulty ceases completely. According to the Mishna, it is true, the prosecution of a capital trial is also forbidden on the *eve* of a feast or of the Sabbath. But this regulation definitely was not in operation at that time; for it is a purely Mishnic regulation bound up with the humanitarian view of the Pharisees, that a death sentence could only be pronounced the day after the trial.<sup>69</sup>

The view that the sanhedrists carried out a formal legal trial finds confirmation in the fact that in its polemics against the Jewish leaders the early Church never reproaches them with breaking legal regulations.<sup>70</sup> But there is *one* reproach which we cannot refrain from making against them. That is that they, or at least the majority of them, assembled together, not with the purpose of reaching a just verdict, but obviously with the firm intention of convicting Jesus of a capital crime (Mark 14:1, 55). And surely

<sup>67</sup> Cf. also BILLERBECK, II, 829-832. He brings forward documentary proofs that if the fifteenth of Nisan, that is to say the first day of the Unleavened Bread, fell on a Friday, it was permissible to prepare the food for the coming Sabbath on it. The abstinence from work required for the first and seventh day of the Unleavened Bread is not so severely obligatory, even in the Old Testament, as on the Sabbath, which ranks higher than either feast day. Cf. P. HEINISCH, *Exodus* (1934), p. 100; G. BEER, *Exodus* (1939), p. 66. BICKERMANN, *op. cit.*, pp. 174 f., refers to Mark 11:27 and expresses the following opinion: The authorities, who had not dared to seize the Nazarene after His revolutionary action in the Temple but had contented themselves merely with asking Him by what authority He did these things, could very well assemble even on the night of the Pasch, as one of His disciples had promised that he could easily play Him into the hands of their police at that hour.

<sup>68</sup> See Excursus I.

<sup>69</sup> See Excursus VI.

<sup>70</sup> Cf. P. E. DAVIES, "Early Christian Attitudes toward Judaism and the Jews," JBR, 13 (1945), 73-82.

that weighs more heavily than the hypothetical disregard of an outward form.

When it is established that the proceedings constituted a legal trial—both words are of importance—the various modern theories to the effect that the Jews either did not participate at all in the trial of Jesus, or only had an indecisive part in it (theories 4 and 5 *above*), are disposed of.

4. Most commentators assume, on the basis of Mark 15:1, that after the night proceedings the Sanhedrin held a further sitting in the early morning. This measure is explained by many as an effort to satisfy to some extent the legal rule that death sentences must only be pronounced the day after the first trial. As mentioned above, however, this rule of the Mishna bears too distinctly the stamp of rabbinical law to allow of our assuming that it was in operation in the time of Jesus. Besides, a morning sitting would not have satisfied this rule, in any case, because, according to the Jewish division of the day, a verdict could only have been brought in, at earliest, after the next sunset. Some exegetes actually regard only the second sitting of the Sanhedrin as an official plenary session.<sup>71</sup> It is hardly likely, however, that a separate morning sitting took place at all. The relevant text in Mark runs: "And as soon as it was morning, the chief priests made a resolution with the elders,<sup>72</sup> the scribes and the whole Sanhedrin. And they bound Jesus and led him away, and delivered him to Pilate" (Mark 15:1). There is nothing whatsoever said here about an interruption of the session and a reassembling of the Sanhedrin. The particulars concerning the composition of the council do not indicate a fresh sitting either; for though the numerical completeness is strongly emphasized in 15:1, the council which had assembled

<sup>71</sup> Th. ZAHN, *Das Evangelium des Lukās* (4th ed., 1920), pp. 692 f.; F. HAUCK, *Das Evangelium des Markus* (1931), p. 181; BUNCH, *op. cit.*, p. 84; RICCIOTTI, *op. cit.*, pp. 597, 613; DANIEL-ROPS, *op. cit.*, p. 490; BÄMMEL, *op. cit.*, and others.

<sup>72</sup> The version of SCL is probably preferable to that of AB as *lectio difficilior*; but even if one should take the latter text as the basis to go on ("after they had held a consultation,") a fresh sitting would still not be thinkable; the consultation would have taken place at the end of the night sitting, at which the procedure to be adopted before Pilate was decided on.

previously was *all* the Sanhedrin according to 14:53, 55.<sup>73</sup> Mark must therefore have in mind the same meeting of which he had already spoken in his account of the night trial. This session ended in the morning with the handing over of Jesus to Pilate. The subject of the resolution of which Mark speaks will have been the handing over of Jesus.<sup>74</sup> The evangelist does not give the story of the trial in one unbroken narrative because he deems it expedient to insert the story of a simultaneous happening, namely, Peter's denial (Mark 14:66-72). When he resumes the interrupted main narrative,<sup>75</sup> naturally he has to reintroduce those taking part, namely, the various groups making up the Sanhedrin, especially as he is intent upon underlining as clearly as possible the responsibility of that body. Hence the pleonasm, "and the whole Sanhedrin."

This interpretation of the much-disputed passage is probably the simplest and most illuminating one.<sup>76</sup> It is worthy of note that those authors who distinguish two sittings in some cases differ sharply regarding the subject of the consultation. It is often assumed that after the official proceedings during the night the Sanhedrin met again in the morning to discuss the delivering up of Jesus to Pilate.<sup>77</sup> But the question arises: Why did they not do this immediately after the night session? A similar objection ap-

<sup>73</sup> This contrary to P. GAECHTER, *ZkTh*, 78 (1956), 230, who assumes that only some of the members took part in the night session but that the whole bench took part in the morning session, at which the formal sentence of death was passed.

<sup>74</sup> The lack of the definite article seems to preclude connecting the "Resolution" mentioned in Mark 14:64 with the death sentence.

<sup>75</sup> GAECHTER, *op. cit.*, p. 230, objects: "Then the ill-treatment of Jesus should not be inserted as a new scene in 14:65 after the account of the night session." But the ill-treatment scene belongs to the night session; it is not said that the session had been dissolved. Besides, 14:65 probably was not linked with 14:64 from the beginning.

<sup>76</sup> It is to be found in J. SICKENBERGER, *Leben Jesu* (1932), § 250; it was justified thoroughly by J. SCHMID, *Das Evangelium nach Markus* (3rd ed., 1954), pp. 288 f.

<sup>77</sup> A. BRÜLL, "Die Ergreifung und Überlieferung Jesu an Pilatus," *TQ*, 83 (1901), 398 f.; J. BELSER, *Geschichte des Leidens etc.* (2nd ed., 1913), pp. 323-327, like BRÜLL, speaks of a "secret night session"; MANASSERO, *op. cit.*, pp. 104 f.

plies to Bickermann's view<sup>78</sup> that the Sanhedrin held a consultation in the morning in order to decide the measures made necessary by the knowledge gained in the night session, namely, that Jesus was worthy of death, before surrendering Him to the Roman tribunal. According to Goguel<sup>79</sup> the Sanhedrin assembled in the morning, not to hold a second session, but merely to conduct Jesus to Pilate. But why then does the evangelist speak of a "consultation"? Most exegetes assume the examination before Caiphas described by Mark (Matthew) to have taken place in the night session, and the hearing before the Sanhedrin related by Luke, in the morning session.<sup>80</sup> But despite Holzmeister's reference to the repetitions respecting the court sessions, there can be no doubt at all about the identity of the Mark (Matthew) proceedings on the one hand and those reported by Luke on the other.<sup>81</sup> It has been rightly said that the two sittings appear to be absolutely identical. It is particularly unthinkable that Jesus should have obliged the Sanhedrin by answering twice with an affirmative their question concerning the divine sonship or messiahship, and by twice foretelling His sitting at the right hand of God. The modest redundancy on which Holzmeister puts his finger is a mere trifle in comparison with this.<sup>82</sup> The only difficulty is presented by the time given in Luke 22:66; but it can be explained by the literary technique of Luke.<sup>83</sup> Many authors assume only

<sup>78</sup> *Op. cit.*, p. 194.

<sup>79</sup> *Op. cit.*, p. 376, n. 2.

<sup>80</sup> C. M. GENELLI, "Jesus Christus vor seinen Richtern," TQ, 22 (1840), 32-35; M. VON ABERLE, "Die Berichte der Evangelisten über Gefangennahme und Verurteilung Jesu," TQ, 53 (1871), 25; J. LANGEN, *Die letzten Lebenstage Jesu* (1864), pp. 264 f.; J. KNABENBAUER, *Evangelium secundum Marcum* (1894), p. 405; U. HOLZMEISTER, ZkTh, 39 (1915), 336 f.; A. PLUMMER, *Commentary on the Gospel According to St. Luke* (4th ed., 1916), p. 518; A. VALENSIN-J. HUBY, *L'Évangile selon S. Luc* (1927), pp. 401 f.; S. SALADRIGUES, "El proceso religioso de Jesús," AST, 4 (1928), 89; J. H. BERNARD, *Commentary on the Gospel of St. John II* (1929), 591; INNITZER, *op. cit.*, pp. 173 f.; G. MÜLLER, *Der Weg Nach Golgotha* (1949), p. 91; A. VASSILAKOS, *The Trial of Jesus Christ* (1950), p. 26; Daniel-Rops, *op. cit.*, pp. 490-491.

<sup>81</sup> BRÜLL, *op. cit.*, p. 398.

<sup>82</sup> *Op. cit.*, p. 337.

<sup>83</sup> See Excursus IV.

one Sanhedrin sitting to have taken place, and they shift the time of this session, placing it not in the night but at daybreak. These authors understand Mark 15:1 to be a later chronological note referring to the session of the Sanhedrin already described.<sup>84</sup> This view is shattered by the fact that the Sanhedrin proceedings took place at the same time as Peter's denials (or at any rate, the third of them, John 18:24-27), which happened according to all the gospels while it was still night (cf. Mark 14:55; Luke 22:56). Others who hold that there was only a morning sitting are G. E. W. van Hille, Pierre Benoit, Jean Cantinat and Vincent Taylor;<sup>85</sup> but these maintain that Mark 15:1 is not a subsequent indication of the time but a literary duplication of 14:55-64.<sup>86</sup> Jesus was indeed examined in the night also, they say, but this examination was identical with that reported in John 18:13, 19-24.<sup>87</sup> Here again this hypothesis is confronted with the fact that not only according to Mark (Matthew) but also according to John, the proceedings before Caiphas took place while it was still night, and were already at an end by daybreak (John 18:24-28).<sup>88</sup>

<sup>84</sup> B. KLÖVEKORN, "Jesus vor der jüdischen Behörde," BiZ, 9 (1911), 266-276, esp. 266-272; K. KASTNER, *Jesus vor Pilatus* (1912), p. 8; *Jesus vor dem Hohen Rat* (1930), p. 110.

<sup>85</sup> G. E. W. VAN HILLE, "De ultima Iesu vitæ nocte etc.," Mnem (III s.) 10 (1942), 241-250; P. BENOIT, "Jésus devant le Sanhédrin," Ang, 20 (1943), 143-165, esp. 156-160; J. CANTINAT, "Jésus devant le Sanhédrin," NRT, 75 (1953), 303 f.; V. TAYLOR, *The Life and Ministry of Jesus* (1954), p. 198. Almost in the same strain, K. BUCHHEIM, *Das messianische Reich* (1948), pp. 288 f.

<sup>86</sup> Cf. J. WEISS, *op. cit.*, p. 312: "Ich verstehe nun den Text des Markus so, dass er hier (15:1) eine Überlieferung mitteilt, die von der nächtlichen Synedrums-sitzung nichts enthielt und auch über den Inhalt der Morgensitzung nichts wusste. Sie erzählte nur, dass am frühen Morgen das Synedrium eine Sitzung gehalten habe (natürlich war diese höchst geheim), nach deren Beendigung Jesus zu Pilatus abgeführt wurde. Dies wird der einfache, unausgeschmückte Bericht des Petrus gewesen sein." Similarly LIETZMANN, see Excursus V.

<sup>87</sup> Likewise M.-J. LAGRANGE, *The Gospel of Jesus Christ*, II, 237-239, 243-246; and LEBRETON, *op. cit.*, pp. 1052-4 who, however, see John's text as describing a hearing before Caiphas, not before Annas. In this connection see Excursus II.

<sup>88</sup> When BENOIT, RB, 60 (1953), 452, n. 2, objects that John does not speak of a Sanhedrin session at all, he is correct insofar as John gives no details of what happened while Jesus was before Caiphas. But it is obvious that something remarkable must have happened, otherwise the evangelist would have omitted the information in 18:24. Does not a glance at the synoptics give one to understand that John is thinking here of the trial before Caiphas described by

## EXCURSUS VI

*On the Question of Whether the Mishnic Criminal Code Was in Operation in the Time of Jesus*

THE CRIMINAL code of the Mishna was compiled toward the end of the second century A.D., that is to say, long after a real Jewish legislature had ceased to exist. Even the parts of the tractate *Sanhedrin* which appear to belong to an older layer and are attributed by scholars (G. HÖLSCHER, *Die Mischnatraktate "Sanhedrin" und "Makḥot"* [1910], pp. 12 f., and S. KRAUSS, *Sanhedrin-Makḥot* [1933], p. 9) to the Rabbi Meïr (middle of the second century), do not allow of any final conclusions regarding sanhedrial procedure prior to 70 A.D. For apart from the fact that Rabbi Meïr could hardly have drawn upon the memories of living persons regarding the sanhedrial practice before 70 A.D., his description is fundamentally suspect as reflecting the view of the scribes. And we do not know whether these views ever had any importance in practice. A whole series of rules in Meïr's

them? And this is confirmed by the further course of John's narrative: Pilate's question to Jesus, John 18:33, postulates that Jesus had been convicted by the Jews of claiming to be the Messiah, and the utterance of the Jews, 19:7, shows that they have established the guilt of Jesus according to their law. Both utterances can be satisfactorily explained *only* if a trial before the Jewish court had already taken place. To be sure, in the eyes of the Jews, Jesus' guilt was already established before His arrest (5:18; 10:31), but the fact that this conviction of theirs did not seem to them sufficient to justify denouncing Him to Pilate, is already proved by the questioning to which He was subjected by Annas (18, 19): "Aus dem, was vor Annas geschieht, und dem, was vor Pilatus als geschehen vorausgesetzt ist, muss man schliessen, dass Jesus vor Kaiphas, bei dem er in der Zwischenzeit war, verurteilt ist" (F. BÜCHSEL, *ZSysT*, 4 [1926/27], 245, n. 1). Now, this trial before Caiphas assumed by John took place *before* daybreak according to the Fourth Evangelist's account. John already indicates this by the fact that he reports the third denial by Peter after the news of the sending of Jesus to Caiphas, which doubtless took place in the latter part of the night (v. 25: Peter was warming himself; v. 27: the cock crew). John shows this still more clearly in 18:28, as the indication of the time here would have no sense if the evangelist had thought that Jesus had been sent to Pilate *only after* daybreak. VAN HILLE is fully conscious of the significance of this indication of the time, but his view that it "really" refers to the sitting of the Sanhedrin (*op. cit.*, pp. 245, 250) is quite obviously not the view of the evangelist. What determines VAN HILLE, despite 18:28, to this hypothesis is his conviction that the Sanhedrin *could not* have sat *before* daybreak because the holding of legal trials by night was prohibited. In the first place, however, it is far from certain that such a prohibition existed at the time (see Excursus VI), and secondly, the fact that a night session was illegal does not necessarily mean that it did not take place.

trial procedure can be seen at first glance to be purely legal theory. In *Sanhedrin* I 5, it is laid down that a tribe which has fallen into idolatry must be judged by a bench of judges numbering seventy-one members; that this council alone can decide whether war is to be waged, and also whether a town is to be regarded as "led astray," in other words, whether it is to be destroyed and its inhabitants put to death (*Sanh.* IX 1b); and finally, that, in the interests of national security, such a ban must not be imposed upon frontier towns, or upon three towns simultaneously, but at most upon one or two. In *Sanhedrin* II 2-5, the legal position of the king is circumscribed in detail, doubtless with a native king and not a foreign ruler in mind. But none of these regulations can have had any practical significance in Roman times, hence they are no more than academic reflections, pious wishes of the scribes. Definite contemporary information shows another part of these mishnic statutes to be of secondary importance. Thus, *Sanhedrin* VII 4 lays down that sexual intercourse with a daughter-in-law, a crime for which Lev. 20:12 demands the death penalty without prescribing in detail the manner of death, is to be punished by stoning. But the Book of Jubilees, which dates from pre-Herodian times (SCHÜRER, III, 378) demands burning for this crime (Jub. 41:25 f.), a proof that the above-mentioned Mishna statute cannot be based upon generally practiced law (cf. G. HÖLSCHER, *op. cit.*, p. 29). In John 8:5 the woman taken in adultery is to be stoned; Lev. 20:10 and Deut. 22:22 lay down the death penalty for this crime without defining the manner of death; but according to the Mishna (*Sanhedrin* XI 1) the adulterous wife and her seducer are to be strangled. Now, this difference is often explained by the theory that the woman mentioned in John 8 was not married but only engaged and therefore fell under the stoning rule, Deut. 22:23 f. (BILLERBECK, II, 520; R. EISLER, ZNW, 22 [1923], 307, n. 2; J. JEREMIAS, *ibid.* 43 [1950-1951], 148, n. 17). But this way out of the difficulty is definitely not conveyed by the wording of John 8:3. (Firstly, the woman caught in adultery in John 8 is called "woman" four times, but never "girl," "virgin," "espoused damsel," or "young woman." Compare, on the other hand, Deut. 22:23 f. Secondly, it is clearly laid down in Deut. 22:23 f. that the betrothed girl who is unfaithful shall be brought out of the city *together* with her seducer; but the adulteress in John 8 is alone, although she was caught *in flagranti*; true, according to Deut. 22:22 and Lev. 20:10, the seducer of a wife must also be put to death, but the execution of the *two together* is not prescribed.) The difference shows rather, that the Mishna law was not yet in force in the time of Christ. At that time, all cases of adultery were punished by stoning, because this was actually the legal death sentence. It was only later that the rabbis laid down the milder penalty of strangling for those cases for which the Law of Moses did not specify the manner of death (see J. BLINZLER, "Die Strafe für Ehebruch in Bibel und Halacha," NTS, 4 [1957], 32-47). These observations alone show that it is arguable whether the Mishnic laws were in operation in the time of Jesus. See H. DANBY, "The Bearing of the Rabbinical Criminal Code on the Jewish Trial

Narratives in the Gospels," JThSt, 21 (1919), 51-77; cf. also H. DANBY, *Tractate Sanhedrin* (1919), IX-XII. G. HÖLSCHER also has declared in *Die Mischnatraktate "Sanhedrin" und "Makḥor"* (1910), p. 25: "It cannot be overlooked that the legal ordinances of Meir's trial procedure must to some extent have been enactments, the observance of which contemporary conditions forbade in many points; legal theories which could not have been practiced under the Romans." And on p. 35 he writes: "One must definitely keep clear of the idea that the legal enactments in the Mishna, insofar as they go beyond the Old Testament words, cannot necessarily be applied to the time of Christ. Such procedure, though very common nowadays, can only be described as most dubious. The recognition of this negative state of things appears to me to be of importance for New Testament research." G. F. MOORE has expressed himself in similar terms in *Judaism in the First Centuries of the Christian Era*, II (1927), 187, n. 5: "The inquiry whether the trial of Jesus was 'legal,' i.e., whether it conformed to the rules of the Mishna, is futile because it assumes that those rules represent the judicial procedure of the Old Sanhedrin." DANBY's view is corroborated in essentials by H. LAIBLE in "Der Prozess Jesu," AELK, 61 (1928), 655-659, and by J. KLAUSNER in *Jesus von Nazareth* (2nd ed., 1934), pp. 463 f., 178, who had already expressed himself earlier to the same effect (in the journal, *He-Atid*, 5 [1913], 89-91).

The essay on "The Tannaitic Tradition and the Trial Narratives" in I. ABRAHAM'S book, *Studies in Pharisaism and the Gospels*, II (1924), 129-137, represents the most important attempt to refute DANBY's view. Apparently his arguments have not yet received an appraisal; therefore we shall deal with them briefly here.

For the credibility of the Mishna data concerning the Sanhedrin, ABRAHAM (pp. 129 f.) reasons in the first place as follows: Several of the relevant Mishna traditions go back to Jose ben Halaphta, who was a teacher of the Rabbi Jehudah, the editor of the Mishna, and was regarded by his contemporaries as the greatest authority on chronological matters. To this it may be remarked that this information about Jose, even if correct, in no way proves that the information concerning the Old Sanhedrin contained in the Mishna is reliable and that the regulations contained in the tractate *Sanhedrin* were already in force in the time of Jesus. One must remember that Jose ben Halaphta only lived in the second century, and between the time of Jesus and his time there came the national catastrophe of the year 70, which created a completely new situation in religious, legal, social, and political respects. ABRAHAM also discusses (p. 137) the relationship between the Mishna and the gospels, and makes the assertion that the gospel accounts of the trial of Jesus were written no nearer in date to the events recorded than many of the accounts in the Mishna. It is not easy to deal with this assertion, as ABRAHAM omits to mention which reports in the Mishna it refers to. At any rate, the fact is that the Mishna dates from the second century, while all the gospels came into existence within the first century, some of them even before the year 70. To be sure, the Mishna

accounts are founded upon older traditions, but the same applies to the information in the gospels. ABRAHAMS even thinks (p. 137) that the discrepancy between the rabbinical trial procedure and that employed against Jesus according to the gospels is so great that the Mishna tractate *Sanhedrin* seems almost like polemic of the rabbis against the gospels. In this connection he reasons that the gospel narratives of the passion can hardly have been known to the Jews before the time of the Mishna. But in view of the time that the gospels came into existence, this argument cannot be regarded as plausible either. It would probably be more correct to say that directly anti-Christian polemics are not to be detected in the tractate *Sanhedrin*, as the "heretics" referred to in *Sanhedrin* IV 5c can hardly have been Jewish Christians, but apparently were a Gnostic sect (see S. KRAUSS, *Sanhedrin-Makḥot* [1933], p. 165).

As proof that the rules laid down in the Mishna were already valid in the time of Jesus, ABRAHAMS (p. 130) puts forward two examples from the New Testament. The tearing of one's garments upon hearing a blasphemy (Matt. 26:65) corresponds with the rule in *Sanhedrin* VII 5b, he maintains. He holds that rabbinical information, for example *T.B. Sanhedrin* 43a (see also BILLERBECK, I, 1037 f.), likewise bears witness to the custom of giving a narcotic drink to a person condemned to death (Matt. 27:34). But the two examples do not imply what ABRAHAMS mistakenly says they do; for it is a question in each case of a custom which can be shown to be already contained in the Old Testament. For a counterpart to Matt. 26:65, see 4 Kings 18:37; 19:1, 4; and for Matt. 27:34 see the admonition in Prov. 31:6.

Of the four forms of execution specified in the Mishna, namely, stoning, burning, beheading and strangling, the last-named is not prescribed in the Old Testament. But as strangling is precisely the form of execution testified to by Josephus as the one actually in use, ABRAHAMS believes (pp. 130 f.) that at least this Mishnic ordinance can be proved to have been observed by the *Sanhedrin* in the beginning of the first century A.D. This assertion also is debatable. Josephus first mentions strangulation in a report of the death of John Hyrcanus II. According to *Antiquities* xv. 6. 2. § 165-173, Herod accused the Hasmonean of conspiring with the Arab king Malchus and had him executed after having handed his seditious letters over to the *Sanhedrin*. According to the other account in *Antiquities* xv. 6. 3. § 174-177, it was Herod himself who ordered the execution, specifying strangulation. In this way Herod is made out to be solely responsible for the choice of this mode of execution, which was not unknown to the Romans (cf. Theodor MOMMSEN, *Römisches Strafrecht* [1899], p. 930). The fact that it is a question here not of rabbinical but of foreign criminal law is confirmed by the case of the two sons of Herod, Alexander and Aristobulus. They were denounced by their father to the emperor for high treason, and thereupon condemned to death by strangulation by a court in Berytus of which Roman officials were members (*Antiquities* xvi. 11. 1-7. § 356-394; *The Jewish War* i. 27. 1-6. § 534-551). Moreover, the sadducean criminal code

seemed to have known this mode of execution too (BILLERBECK, IV, 349 f.). Where it came from originally cannot be ascertained definitely; in Tob. 2:3 it is indicated as being Ninivean.

The rabbinical sources speak of a court consisting of twenty-three members (*Mishna Sanh.* I 4a; 6a), the so-called "Lesser Sanhedrin." DANBY has asserted that this court is mentioned nowhere except in the Mishna. ABRAHAMS on the other hand (p. 132) shows that it is mentioned twice in the Tosephta (*Hagigah* 20, 9; *Sanhedrin* 7, 1), and moreover in an account traceable to Jose ben Halaphta. But the Tosephta gives us no absolutely certain information concerning conditions in the time of Jesus. When ABRAHAMS points to Mark 13:9; Matt. 10:17 and Josephus *The Jewish War* ii. 14. 1. § 273, one can object that there is nothing explicitly stated here about a council of judges consisting of twenty-three members.

The Mishna contains the rule that only men and not women may be hanged (*Sanh.* VI 5b). But the story is handed down that Simeon ben Shetach had eighty women hanged in Ascalon in one day (*Sanh.* VI 5c). This case, which seems to show that the above-mentioned rabbinical rule was not in force in the time of the Old Sanhedrin, ABRAHAMS seeks to prove (pp. 133 f.) is an exceptional measure, dictated by the "necessity of the hour." This is a highly improbable explanation, however; for a judge who is forbidden by law to condemn more than *one* person to death in *one* day, surely cannot plead "necessity of the hour" for a mass execution such as this, carried out in a manner contrary to the law. ABRAHAMS' remark concerning the legendary character of all stories connected with the name of Simeon is of more weight. But the conclusive point is that the incident is alleged to have happened at a time when hardly any scholar believes the Mishnic laws to have been in force. For Simeon ben Shetach lived about 100 B.C. (H. L. STRACK, *Einleitung in den Talmud* [5th ed., 1908], p. 83; A. SCHLATTER, *Geschichte Israels* [3rd ed., 1925], pp. 153-165).

One of the most serious objections against the assumption that the Mishnic criminal code ever possessed practical validity emerges from the very fact of the exaggerated mildness of this code. In the Mishna tractate *Makḥot* I 10d, a Sanhedrin which passed one death sentence in seven years is described as "destructive" because it goes in for too violent liquidating of the population! (See S. KRAUSS, *Sanhedrin-Makḥot* [1933], pp. 331 f.) Similarly, the Rabbi Eleazar ben Azaria reproaches a court which ordered one execution in seventy years (*Makḥot* I 10d). This Mishna section is a supplement to the tractate *Sanhedrin* (cf. Ch. ALBECK, *Untersuchungen über die Redaktion der Mishna* [1936], pp. 132 f.). The whole trial procedure of the Mishna shows the tendency to offer the accused every possible chance to come through the trial safely. Now, it is rightly said that a court operating according to such principles and rules can never have really existed. For an administration of the criminal code which backed up criminals instead of convicting and punishing them would have had to give up functioning very soon.

ABRAHAMS meets this objection (p. 135) with historical documentation of the actual mildness of rabbinical legal sentences. Shortly before Titus besieged Jerusalem, the rebel Zealots and their allies, the Idumeans, took it into their heads to give a pretence of legality to their liquidations, to which Annas II and others of the ruling caste had fallen victim. So they set up a court consisting of seventy members and arraigned their opponents before it. These judges acquitted a prisoner named Zacharias ben Baruch, declaring that they would rather die themselves than sentence the man to death (*The Jewish War* iv. 5. 4. § 341). This episode only proves, however, that the judges were courageous men, and not, as ABRAHAMS believes, that they followed the humane rabbinical code. For, given the state of things, there cannot have been any question of the accused being guilty. ABRAHAMS' second example is the intervention of Gamaliel in the proceedings against the apostles (Acts 5:34-40). But here again it is inadmissible to draw the conclusion that the rabbinical criminal code was actually in operation. On the other hand, one gets the impression from the account that it would have gone ill with the accused apostles but for Gamaliel's intervention, that is, if the law then in operation had been strictly applied. ABRAHAMS refers, in the third place, to the punishment of scourging, for which the Mosaic Law, Deut. 25:2, laid down as maximum forty strokes, whereas the Mishna allows only thirty-nine, a number which was actually adhered to in New Testament times according to the evidence of 2 Cor. 11:24 and Josephus (*Antiquities* iv. 8. 23. § 248). Nevertheless, it is questionable whether the pharisaic criminal code, which tended to make the punishment mild, was operative in this case. It remains to be considered whether it was not, rather, a case of sadducean and pharisaic interpretation of the Scriptures combining here. By taking the last words of Deut. 25:2 together with the first words of v. 3, as is done in the Midrash, the Sadducees, who held fast to the letter of the written law, could arrive at the view that the number forty must not be reached. Josephus, too, seems to consider the number thirty-nine to be that laid down in the Pentateuch. That the reduction of the number to thirty-nine is not to be specifically attributed to the Pharisees is also shown by the fact that there were rabbis who demanded the full forty strokes, for instance, Jehudah (c. 150 A.D.; cf. *Makḥot* III 10). The fourth instance recalled by ABRAHAMS is the statement of Josephus that the Pharisees were mild in the matter of sentences (*Antiquities* xiii. 10. 6. § 294). This information is certainly reliable, as is also the statement that the Sadducees were "of all the Jews the most harsh in their legal sentences" (*Antiquities* xx. 9. 1. § 199). The tendency to make the criminal code more humane, which was carried to exaggerated and unrealistic lengths in the Mishna, cannot have emerged only in the rabbinical period, but must have already been a characteristic of the pharisaic conception of the Law. The only question is how far these theories gained practical significance, and more particularly, whether they ever succeeded in winning their way into the Sanhedrin in the olden days. We do not have a single documentary proof that the Great Sanhedrin

adhered to a specifically pharisaic view of the law in criminal trials, but we do have at least one documentary proof that it operated on the lines of the Old Testament-sadducean criminal code. This concerns an episode in the childhood of the Rabbi Eleazar ben Zadok (c. 100 A.D.), preserved in the Talmud. As a small child, riding on his father's shoulders, he had looked on while a priest's daughter, condemned for immorality, was burned to death on a pile of faggots (*Tosephta Sanhedrin* IX. 11; *Mishna Sanhedrin* VII 2b; *Jer. Sanhedrin* VII 2 24b). The incident undoubtedly happened in the period of the Second Temple, probably in the reign of Herod Agrippa I (41-44 A.D.); cf. A. SCHLATTER, *Die Tage Trajans und Hadrians* (1897), pp. 80 f.; *idem, Geschichte Israels* (3rd ed., 1925), p. 271, and n. 243; J. JEREMIAS, *ZNW*, 27 (1928), 100; *ibid.*, 45 (1950/51), 146. The court which passed the sentence can only have been the Sanhedrin of Jerusalem. True, J. JEREMIAS in *Jerusalem zur Zeit Jesu*, II (1929), 37, n. 2, draws the conclusion from certain passages in the Talmud in which decisions of "the high priests" or "the elders of the priesthood" are mentioned, that besides the Sanhedrin there was a special court for priests, and he assumes that the priest's daughter was sentenced by that court. But a priests' court of this kind is very hypothetical since neither the New Testament nor Josephus knows anything of it. If it had really existed, and particularly in the time of Jesus, then according to rabbinical tradition it would have been competent to deal only with breaches of the civil law, not with capital charges. That the priest's daughter was condemned by Herod Agrippa I himself is likewise unthinkable; the Sanhedrin was independent of the king in its jurisdiction. The exclusive competence of the Sanhedrin emerges clearly in the principle recorded by Josephus: "Our law forbids that a person should be executed, even if he be a criminal, unless he has first been condemned by the Sanhedrin" (*Antiquities* xiv. 9. 3. § 167). In the condemnation of that priest's daughter the Sanhedrin had quite obviously proceeded on the lines of sadducean law. The Sadducees, who recognized only the written law of the Old Testament (*Antiquities* xiii. 10. 6. § 297), upheld a literal interpretation of the precept Lev. 21:9, according to which a priest's daughter guilty of whoredom was condemned to be burned. The Pharisees, on the other hand, advocated a more humane kind of "burning." This consisted in pouring melted lead into the body of the condemned person through the month (*Mishna Sanh.* VII 2a). This form of execution was regarded as more humane because it preserved the exterior physical integrity of the executed person, a point upon which the Pharisees in particular set great value (cf. A. BÜCHLER, "Die Todesstrafen der Bibel und der jüdisch-nachbiblischen Zeit," *Monatsschrift für Geschichte und Wissenschaft des Judentums*, 50 [1906], 539-562; 664-706, especially 705). It was also much less painful because it was the custom to half strangle the delinquent first. It was therefore more or less a symbolical burning. Now, if that unfortunate priest's daughter was tried and executed in accordance with the harsh sadducean method, this is a conclusive proof that the Sanhedrin of the 40s A.D., despite its strong leaven of pharisaism,

still held firmly to the sadducean penal code. This conclusion is fully in accordance with what we learn elsewhere of the Sadducees and of the composition of the Sanhedrin. True, Josephus reports that the Sadducees were numerically weak and exercised far less influence on the masses than the Pharisees did (*Antiquities* xviii. 1. 4. § 17). But in saying this he is thinking in terms of the relations of the two parties with the masses and not especially of the relative distribution of their power and position within the Sanhedrin. As Josephus himself says, it was precisely "the most respected and highly placed persons" who were of the sadducean school of thought, that is to say, just the persons whom one would expect to find in the Sanhedrin. That the sadducean element in the Sanhedrin was still strong enough in the time of Jesus to give that body its tone, at least in certain of its enactments, can be deduced from the fact that the leading members of that body, namely, the high priests, were Sadducees. This is vouched for, not only in the New Testament, but also by Josephus (*Antiquities* xx. 9. 1. § 199). It was only later rabbinical tradition which would not admit that this was so and which made the president and the vice-president of that Sanhedrin leaders of the Pharisee school of thought (first in *Chagiga* II 2). Another reason against underestimation of the influence of the Sadducees within the Sanhedrin is that two of the three groups composing the Sanhedrin, namely, the "high priests" and the "elders," were essentially sadducean in their leanings (for proof, see J. JEREMIAS, *op. cit.* pp. 96 f.). As regards the time when the Sanhedrin abrogated the sadducean criminal code, an account in the Fasting Scroll, dating from shortly before 70 A.D., throws some light on this. It says: "On the fourth (in another reading, fourteenth) Tammuz the Book of the Code was abolished" (*Meg. Taanit* 4. [§ 12, LICHTENSTEIN]). Today the "Book of the Code" is almost unanimously taken to mean a sadducean penal code (thus the so-called "Scholion," and modern authors: KROCHMAL, GEIGER, GRATZ, SCHWAB, LAUTERBACH, GINZBERG, FINKELSTEIN, DALMAN, STRACK, LICHTENSTEIN, BILLERBECK, HOLZMEISTER, J. JEREMIAS, OLMSTEAD, and others), and definitely with reason. See particularly the arguments of H. LICHTENSTEIN, *Die Fastenrolle* (1931/32), pp. 295 f. In which year did that day fall which was thereafter celebrated as a day of rejoicing? J. JEREMIAS, *op. cit.*, p. 136, n. 10, leaves it an open question whether the abolition took place under Alexandra (76-67 B.C.), Herod Agrippa I (41-44 A.D.), or at the time of the outbreak of the rebellion against the Romans (66 A.D.). G. DALMAN in *Aramäische Dialektproben* (2nd ed., 1927), p. 42 and H. L. STRACK, *op. cit.*, p. 13, reckon only with the first and second possibilities. But since sadducean criminal law must have still been in force at the time of the execution of that aforementioned priest's daughter, i.e., under Herod Agrippa I, the abolition of the sadducean code and the introduction of the annually celebrated day of rejoicing doubtless cannot have been earlier than that. Hence it can only be a question of the last-mentioned dating. (Likewise OLMSTEAD, *op. cit.*, p. 184; cf. also his contribution in the *Journal of Near Eastern Studies*, 1 (1942), 53 f.).

On the basis of this reasoning, it can be asserted with full confidence that those humane Mishna enactments tending to favor the accused, which have no documentary origin in the Law of Moses, and which seemingly were not observed in the trial of Jesus, bear a purely pharisaic stamp, and had no validity in sanhedrial practice in the time of Jesus. Among these were the prohibition of holding a trial at night, the rule that a death sentence could not be pronounced until the day after the first trial, and also the rule connected with this last, namely, that a capital trial could not take place on the eve of the Sabbath or of a feast day. Among them may also be reckoned the ruling that a person was only judged to be a blasphemer if he distinctly spoke the name of God with a curse; that the blasphemer must have been warned beforehand; that the trial of capital offenses must begin with the hearing of witnesses for the defendant; that the younger members of the Sanhedrin must give their vote first; and that a unanimously voted death sentence ensured the reprieve of the accused. In other words, *everything that has hitherto been attacked as an illegality in the trial of Jesus, in view of the criminal code outlined in the Mishna, was completely in accordance with the criminal code then in force, which was a sadducean code, and did not know or recognize those pharisaic, humanitarian features of the Mishna code which were not founded on the Old Testament.*

A circumstance to which S. KRAUSS, *op. cit.*, p. 50, draws attention makes it seem probable, moreover, that the humane theories of the Mishna existed merely on paper, so to speak, even in the rabbinical era. Punishments such as maiming, scourging, spearing, flaying, blinding and even crucifying, which one would never have expected to come across, to judge by the Mishna laws, occur in the Talmud, Midrash and Targum, though admittedly some of these executions mentioned in Jewish literature took place in non-Jewish territories.

#### EXCURSUS VII

#### *Concerning the Competence of the Sanhedrin*

IN THE days of the procurators, the Sanhedrin of Jerusalem could deal with capital charges and pass death sentences, but, apparently, as everywhere throughout the Roman Empire, only the Roman governor had the right to execute death sentences. This legal situation is clearly assumed in the gospel narratives of the passion. That the so-called "right of the sword" had been withdrawn from the Jews is clearly implied in the words of the Jews repeated in John 18:31: "It is not lawful for us to put anyone to death."

Attempts have been made, it is true, to rob this text of its historical value and obvious meaning. The assertion of critics that the utterance is unhis-

torical and due to an erroneous opinion of the evangelist (for instance by J. FINEGAN, *Überlieferung der Leidens- und Auferstehungsgeschichte Jesu* [1934], pp. 45 f.) has not the shadow of a proof behind it. It is admittedly difficult to reconcile John 18:31 with 19:6, but this difficulty can be met more simply and plausibly than by declaring that 18:31 is unguenuine. For instance, one can interpret 19:6 as an indignant refusal of the Jewish demand (see p. 229 below). The text must have been understood in this sense by the evangelist himself: since he took both statements into his gospel he cannot have felt that there was any contradiction between them. Acts 7:58 could only be played off as an argument against John 18:31 if the Jews' right to execute was even half as clearly and unambiguously asserted there as it is denied by John. Among the newer interpretations of John 18:31, one deserving of first mention is that suggested by Augustine *In Joannis evangelium tractatus* 114. 4, PL 35, 1937 (cf. Cyril of Alexandria and John Chrysostom, PG 74, 612; 59, 452) and adopted by J. BELSER in *Die Geschichte des Leidens und Sterbens, der Auferstehung und Himmelfahrt des Herrn* (2nd ed., 1913), pp. 344 f., according to which the Jews meant: "The Law of the Sabbath prevents us from carrying out the penalty of stoning today, the first sabbatical day of the Easter feast." Obviously this is a distortion of the meaning. Precisely the decisive word "today" is missing in John. Moreover, BELSER assumes that it is proved that the crucifixion took place on the fifteenth of Nisan. As the text in question occurs in John, according to whom the crucifixion took place on the fourteenth of Nisan, the suggested completion as meaning "today on the feast day" must obviously be very wide of the mark. And finally, it is not easy to see why the Jews should have shrunk from carrying out an execution on a day on which they first carried out a capital trial on their own and then pursued it further before Pilate. If those busy measures were no breach of the sanctity of the day, the rapidly performed execution, in which they would not have had to take part themselves at all, could not have done so either. J. I. DÖLLINGER suggests an alternative completion in *Christenthum und Kirche in der Zeit der Grundlegung* [1860], p. 457: "It is not permissible for us to kill anyone who has been guilty of high treason." But such a restriction is indicated neither in the text nor in the context; on the contrary, it is excluded by a definite denial (in the Greek: οὐκ — οὐδένα). If only high treason had been withdrawn from the jurisdiction of the Jews but not crime against religion, the Jews would have been able to execute Jesus for blasphemy and spare themselves the trouble of going to Pilate. It has been asserted, furthermore, that the utterance in John 18:31 was only a subterfuge used by the Jews either to ensure that Jesus should be executed on the cross and thereby branded as one cursed of God (Deut. 21:23), most recently by J. SCHNIEWIND (*Das Evangelium nach Markus* [1937], p. 183), or to save themselves from the reproach of having executed the Nazarene, who was still beloved by many (E. STAFFER, *La Palestine au temps de Jésus Christ* [5th ed., 1892], pp. 103 f.; P. GAECHTER, in *ZkTh*, 78 [1956], 230 f.; cf. Augustine *Enarrationes in Psalmos* 53; PL 36, 762). Another form of the so-called "renuncia-

tion theory" is that the Jews feared to stone Jesus because they anticipated a popular revolt (A. LOISY, *Les évangiles synoptiques*, II [1908], 610; E. MEYER, II, 451). All these interpretations are not only irreconcilable with the wording of John 18:31, but also improbable in themselves. To fit them, the text would have had to run more or less: "We do not intend to kill him." Their keen national pride would never have allowed the Jews to renounce a right in favor of the Romans (cf. A. SCHLATTER, *Geschichte Israels*, [3rd ed., 1925], p. 277). The fear of disturbances on the part of the Galilean followers of Jesus cannot have been the motive for the alleged renunciation; for such disturbances and their consequences would surely also have had to be reckoned with, if the followers of Jesus had decided on desperate action, in the case of an execution by the Romans. Moreover, voluntary surrender of the case would have been thoroughly stupid, for no one could predict with certainty that the procurator would not judge the alleged guilt with more clemency and thereby bring to naught the whole plot built up against Jesus. Many commentators have tried to draw from the evangelist's subsequent remark, John 18:32, the conclusion that the Jews had had the right to stone Jesus—that it implies that crucifixion was not normal but something out of the ordinary, and therefore that stoning would have been the ordinary form of death (DÖLLINGER, *op. cit.*, p. 454; E. SPRINGER, *Das Leiden unseres göttlichen Heilands* [1909], p. 241). But a right to stone is in no way implied here. The words have as background the earlier, unsuccessful attempts of the Jews to get rid of the person of Jesus in illegal ways (John 8:59; 10:31). Hence, the text John 18:31b, when viewed in conjunction with Mark 14:64, can have no other meaning than that, while the Jewish authorities possessed the right to pass sentences of death at that time, they had not the right to carry them out.

More recent scholars have put forward various objections against this view, firmly held by J. MARQUARDT, *Römische Staatsverwaltung*, I (1881), 536, 557; Theodor MOMMSEN, *Römisches Strafrecht* (1899), p. 240; and in ZNW, 3 (1902), 199; SCHÜRER, II, 206-10; A. SCHLATTER, *Geschichte Israels* (3rd ed., 1925), pp. 280 f.; P. VOLZ, *Die biblischen Altertümer* (1914), p. 477; DOERR, *op. cit.*, pp. 47-49; BILLERBECK, I, 1026 f.; II, 571 f.; and many others. Either they represent the view that the Sanhedrin had no jurisdiction whatsoever, or the contrary view, that it had full power over life and death, at least in the case of religious crimes. The following have expressed themselves more or less definitely in favor of the first view: R. W. HUSBAND, *The Prosecution of Jesus* (1916), p. 173; H. REGNAULT, *Une province procuratorienne* (1909), p. 72; J. KLAUSNER, *Jesus von Nazareth* (2nd ed., 1934), pp. 462 f.; E. BICKERMANN in RHR, 112 (1935), 232-234; and others. See, for the second view, J. JUSTER, *Les Juifs dans l'empire romain*, II (1914), 132-142; A. LOISY, *Les actes des apôtres* (1920), p. 309; H. LIETZMANN, ZNW, 31 (1932), 78-84, and elsewhere; H. J. EBELING, ZNW, 35 (1936), 290-298; R. H. LIGHTFOOT, *History and Interpretation in the Gospels* (1935), pp. 147 f.; H. ZUCKER, *Untersuchungen zur Organisation der Juden vom babylonischen Exil bis zum*

*Ende des Patriarchats* (1936), pp. 80 f.; T. A. BURKILL, "The Competence of the Sanhedrin," VC, 10 (1956), 80-96; and G. BORNKAMM, *Jesus von Nazareth* (1956), p. 150. The Sanhedrin is assumed to have had jurisdiction in capital crimes, at least religious ones, by Ch. GUIGNEBERT, *Jésus* (1947), p. 567, and J. LENGLE in *Hermes*, 70 (1935), 321; the latter, admittedly, with the emphatic reservation that the procurator had examined the list of charges and had not been disposed to judge the matter harshly according to Roman law.

Neither view can stand up to searching criticism; this has been proved principally by F. BÜCHSEL, "Die Blutgerichtsbarkeit des Synedrions," ZNW, 30 (1931), 202-210; 33 (1934), 84-87; U. HOLZMEISTER, "Zur Frage der Blutgerichtsbarkeit des Synedrions," Bibl, 19 (1938), 43-59, 151-174; and J. JEREMIAS, "Zur Geschichtlichkeit des Verhörs Jesu vor dem Hohen Rat," ZNW, 43 (1950/51), 145-150; cf. also A. WIKENHAUSER, "Probleme der Leidensgeschichte Jesu," *Oberrheinisches Pastoralblatt* (1934), pp. 23-25.

1. Against HUSBAND's views one must maintain firmly that the Jewish authorities possessed the right to take legal action in the case of offenses for which the death penalty was prescribed by Jewish law. That is quite apparent in view of the Roman principle of allowing the native judiciary to continue to function in the provinces of the empire, thus relieving the governor's courts of the burden, and particularly so in Judea in view of the extraordinary *privilegia judaica* (see pp. 164 f. below). Since it is certain that the Jews were empowered to execute even Roman citizens in special cases (transgression of the Temple enclosure) in accordance with Jewish law, it can surely be assumed with all the more reason that the Sanhedrin had power to sentence—and in certain cases even condemn to death—*peregrini* who had offended against the Jewish law. Cf. also E. SCHÖNBAUER, "Diokletian in einem verzweifelten Abwehrkampfe? Studien zur Rechtsentwicklung in der römischen Kaiserzeit," *Zschr. d. Sav.-Stift. f. Rechtsgeschichte*, Rom. Section 62 (1942), 267-346, who makes the following remark on p. 307: "In my opinion, one understands the course of the trial of Christ before Pontius Pilate, the procurator of Tiberius, only if one bears in mind that in the first century the Jewish state was still bound to Rome by a treaty of friendship and confederation, that it remained a *commonwealth* even after annexation and integration into the empire, and that the Romans on principle left their native judicature as far as possible to the integrated *civitates*. At this time the Romans still recognized the high-priestly constitution of the Jews."

2. On the other hand, one must disagree with LIETZMANN and state explicitly: It cannot be proved that the Sanhedrin still had authority in the time of the procurators to carry out death sentences. The *jus gladii*—the term is of later date (cf. *Dig.* 1, 18, 6, 8)—was reserved to the governors in the Roman provinces, as far as we know. That this was also the case in Judea can be deduced from the information given by Josephus that Coponius, the first procurator of Judea, was endowed by the emperor with the "highest power" (*Antiquities* xviii. 1. 1. § 2), in other words, with "the

power unto killing" (*Jewish War* ii. 8. 1. § 117). As there is no mention either in the above sources or elsewhere that the procurator shared this power with the native authorities, it is only natural to assume that it was possessed exclusively by Coponius and his successors. Theodor MOMMSEN (*Römisches Strafrecht* [1899], p. 120, n. 1) quotes a remark of Origen to the effect that in his time the Roman rulers still reserved to themselves the right of executing criminals (*In Rom.* 6. 7.: "Sermo legis . . . homicidam punire non potest nec adulteram lapidare, hæc enim sibi vindicat Romanorum potestas"—PG 14, 1073a). While JUSTER considered the withholding of the *jus gladii* to be contrary to the principles of justice and sound logic, STEINWENTER (*op. cit.*, p. 477, n. 3), rightly points to the legal position as it was from the fourth century onward, when the *provinciarum iudices* carried out, in the manner prescribed by the law of the state, the death sentences pronounced by the Jewish patriarchs and the Christian bishops (cf. *Const. Sirm.* 1 [333]; *Cod. Theod.* 2, 1, 1 [398]; *Cod. Just.* 1, 4, 8 [408]). One can also point to the "Diatagma Kaisaros," which scholars nowadays are increasingly inclined to assume was put into force about 8 A.D. when Samaritans tried to defile the Temple with bones of the dead (J. CARCOPINO in *RH*, 146 (1931), 88; BICKERMANN, *loc. cit.*, p. 190, n. 1; J. IRMSCHER, *ZNW*, 42 (1949), 181 f.; and S. LÖSCH, *Diatagma Kaisaros* (1936), representing another point of view). For that document proves, namely, that at that time it was the procurator of Judea who exercised the right to execute even in this preponderantly religious matter. J. JEREMIAS (*op. cit.*, pp. 148 f.) sees in the pericope of the woman taken in adultery (John 7:53-8:11) evidence that the Sanhedrin could not carry out any death sentence in the time of Jesus. The scene, he holds, took place not *before*, but *after*, the trial of the woman; but as the Sanhedrin saw no possibility of carrying out the sentence, they tried to "test" Jesus with the question whether the stoning should be carried out. Another piece of evidence put forth by JEREMIAS is more convincing.

The Fasting Scroll names two closely associated events for the month of Elul: "On the seventeenth of the month the Romans withdrew from Jerusalem" (*Meg. Taanit* 6. [§ 16 LICHTENSTEIN]). "On the twenty-second of the month the killing of evildoers began again" (*Meg. Taanit* 6. [§ 17. LICHTENSTEIN]). The first note certainly refers to the capitulation of the Roman cohort of Jerusalem in September 66 A.D. And the second event obviously links up with the first: Five days after the withdrawal of the Roman troops a death sentence is passed and carried out again for the first time by a Jewish court, and, in honor of the restoration of their capital jurisdiction, the twenty-second of Elul is henceforth celebrated as a national holiday and marked by a ban on fasting. If this interpretation of the text is right—and it is undoubtedly the most plausible one (cf. especially, H. LICHTENSTEIN, *Die Fastenrolle* [1931/32], p. 306; less definitely G. DALMAN, *Aramäische Dialektproben* [2nd ed., 1927], p. 43), then we have here documentary confirmation that the Sanhedrin possessed no right to execute in the time of Jesus. The various other legal cases known to us from that time

definitely fall into place in this picture. When the high priest Annas II, availing himself of the absence of a Roman governor following the death of the procurator, Festus, had James the brother of the Lord and some other Christians condemned and stoned by the Sanhedrin, he was called to account in writing by the new procurator, Albinus, and deposed by King Herod Agrippa II, who had the right to supervise the Temple and nominate the high priests (*Antiquities* xx. 9. 1. § 200-203). True, Josephus's account of this incident contains a whole series of obscurities. (In particular, it would seem to emerge from it that in the last years before the outbreak of the war the high priest had to obtain the permission of the procurator for each meeting of the Sanhedrin. Cf. O. HOLTZMANN, *Neutestament Zeitgeschichte* [1895], p. 176. Even if this really were the case, it does not necessarily mean that death sentences could be passed and carried out by the Sanhedrin thus assembled with the permission of the procurator!) But this much emerges with certainty from the above-mentioned text of Josephus: that the high priest Annas had overstepped his jurisdiction in executing those Christians (HOLTZMEISTER, *op. cit.*, pp. 159-161; JEREMIAS, *op. cit.*, p. 146). The case of Jesus ben Hanan, the prophet of woe, is also interesting. This strange man had walked through the streets, lamenting continuously and prophesying the fate of the holy city and the Temple, and had been arrested thereupon by the Jews. They scourged him, then delivered him up to the procurator, Albinus, who had him flogged "until his bones showed through," but decided in the end that he was mad and let him free (*Jewish War* vi. 5. 3. § 300-309). The purpose of the Sanhedrin in delivering this man up to the procurator can surely only have been to have him executed by the Roman authorities; for threats against the Temple were regarded as blasphemies, hence as capital crimes (see HOLTZMEISTER, *op. cit.*, pp. 161-165). Hence, the Sanhedrin could inflict the penalty of scourging but not the death penalty. The statement in the Talmud that the "jurisdiction over life" had been taken from the Jews forty years before the destruction of the Temple (BILLERBECK, I, 1027) also coincides with this, though doubtless the number 40 is a round figure (but S. KRAUSS, *Sanhedrin-Makḥot* [1933], p. 24, thinks otherwise: "Exactly 40 years before the destruction of the Temple, that is to say, in the time of Pontius Pilate"). Actually, the loss of full juridical power must have dated from 6 A.D., when Judea became a province of the Roman empire (HOLTZMEISTER, *op. cit.*, pp. 165-169; JEREMIAS, *op. cit.*, p. 148). The fact that the Mishna tractates *Sanhedrin* and *Makḥot* assume the right of the Sanhedrin to pass death sentences does not warrant a conclusion in favor of the hypothesis of full capital powers of the Jews prior to 70 A.D., in view of the data given in Excursus VI. The stoning of Stephen would alone appear at first sight to corroborate LIETZMANN's thesis; for an official trial by the Sanhedrin had preceded this stoning. But as the vv. Acts 7:57 f. make clear, before judgment could be passed the proceedings were forcibly interrupted by the Jews present. It is nowhere indicated what relation the Sanhedrin's potential sentence, which was prevented by the wild tumult, would

have borne to the execution. Hence, the majority of scholars rightly regard the execution of Stephen as one of those tumultuous acts of lynch law, which the Jews had no legal right to carry out, but which the Roman authorities were not always able to prevent (thus HOLZMEISTER, *op. cit.*, pp. 52 f.; SCHÜRER, II, 210; FELTEN, I, 325, n. 2; E. MEYER, II, 451, n. 1; M. GOGUEL, *Jésus* [2nd ed., 1950], p. 409; DROSSAART BENTFORT, *op. cit.*, p. 44; and others). The view that, in stoning Stephen, the Sanhedrin exceeded its powers is not impossible though certainly less probable (thus JEREMIAS, *op. cit.*, pp. 146 f., who reckons moreover with the possibility that the Jews were authorized by Pilate to proceed against the Christians). That the stoning took place while the post of governor was vacant following the deposition of Pilate in the year 36 (cf. DROSSAART BENTFORT, *op. cit.*, p. 44) is improbable, the more so since it did not actually result in the vacancy of the governorship (Josephus *Antiquities* xviii. 4. 2. § 89). The Acts of the Apostles in particular make us keenly aware of how quick and determined the populace was in those days in resorting to lynchings. According to Acts 5:26, the captain of the Temple guard and his men feared they would be stoned by the people; according to 9:29, Jewish circles in Jerusalem sought to kill Paul; according to 21:30 f., the Apostle Paul nearly lost his life when a mob gathered. Other attempted lynchings are mentioned in 22:22-24; 23:12; 25:2 f. That the Romans did not tolerate such excesses is shown by their intervention, cf. Acts 21:31 f. But they were not always able to prevent these tumults, and when the deed had been committed they do not appear to have taken any severe official action against the transgressors. And finally, Acts 26:10 provides no proof of the autonomous jurisdiction of the Jewish authorities. Paul only says that he imprisoned Christians on the authority of the chief priests, and cast his vote when they were sentenced to death, but he does not say that these sentences were carried out by the Jews. His purpose is not to describe the course of the proceedings against the Christians but only to make clear his own participation in them. And so the just conclusion to which HOLZMEISTER has come in his well-reasoned study is: "No unimpeachable evidence exists that the judicature of the Jews was free during the last six decades of the Second Temple. The evidence brought forward is explicable on the one hand from the mentality of the Jews, who kept harping on their criminal code, and on the other hand in the wise silence of the Romans, who were not wont to intervene when now and then some insignificant man from the lower strata of society was put out of the way. Everything which we know is a confirmation, in part certain and in part probable, of the subordination of the Sanhedrin to the Romans, just as this is implied in the gospels" (*op. cit.*, p. 174).

## 7. THE HANDING OVER OF JESUS TO THE GOVERNOR'S COURT

THE CITY of Jerusalem, together with the province of Judea which was under its jurisdiction, was not a *civitas libera* in the time of the procurators, but a so-called "subject territory."<sup>1</sup> This meant that the Roman authorities could intervene whenever they wished in matters of legislation, the administration of justice, and government. Generally speaking, however, the Romans left even the so-called "subject territories" their own legislation, administration of justice, and local government.<sup>2</sup> As the Edicts of Augustus which have been discovered in Cyrenaica prove, there were native courts of justice there which dealt with both civil and criminal cases, even though they were not entirely independent of the Roman governor.<sup>3</sup> The Jews in particular had an exceptional position throughout the whole Roman Empire. The Jewish communities in Alexandria and Asia Minor<sup>4</sup> possessed autonomous jurisdiction. In the year 50/49 B.C. civil jurisdiction, even over those members of their community who had Roman citizenship, was solemnly confirmed to the Jews of Sardes by an edict of Cæsar.<sup>5</sup> The great extent to which the Romans met the Jews in

<sup>1</sup> SCHÜRER, II, 78 f., 208. Latterly V. TSCHERIKOWER in *Eretz Israel. Archaeological, Historical and Geographical Studies*, I, edited by B. MAISLER and J. W. HIRSCHBERG (Jerusalem, 1951), 94-101 (in Hebrew).

<sup>2</sup> SCHÜRER, II, 79.

<sup>3</sup> Cf. FR. BÜCHSEL, ZNW, 30 (1931), 208; U. HOLZMEISTER, Bibl, 19 (1938), 49.

<sup>4</sup> Cf. A. SEGRÉ, "The Status of the Jews in Ptolemaic and Roman Egypt," *Jewish Social Studies*, 6 (1944), 375-400; E. R. GOODENOUGH, *The Jurisprudence of the Jewish Courts in Egypt* (1929), pp. 25, 34, 88, and elsewhere; G. KITTEL, "Das kleinasiatische Judentum in hellenistisch-römischer Zeit," ThLZ, 69 (1944), 9-20.

<sup>5</sup> *Antiquities* xiv. 10. 17. § 235.

the matter of their religion and worship is strikingly shown in the privilege of exemption from military service granted to the Jews of Asia Minor in the year 49 B.C. by the consul, Lentulus,<sup>6</sup> and confirmed six years later by Dollabella.<sup>7</sup> Palestine was granted the same privilege by Julius Cæsar.<sup>8</sup> The fact that the Jews were also dispensed from emperor worship<sup>9</sup> shows what extraordinary concessions the Romans were prepared to allow the Jewish people. This being so, it may be assumed that the native authorities of Judea must have been allowed a particularly large degree of self-government. And in fact, it emerges from various sources that the Sanhedrin exercised not only civil jurisdiction according to Jewish law but also a certain degree of criminal jurisdiction. Equipped with full authority from the Sanhedrin, Saul harassed and arrested the disciples of Jesus.<sup>10</sup> After his conversion he himself was flogged five times by the Jews.<sup>11</sup> Now, as we know, Saul-Paul had the rights of a Roman citizen. If Jewish courts outside of Palestine were at liberty to condemn a Jew of Roman citizenship to the punishment of flogging for Jewish religious offenses, and to carry out that punishment (cf. Acts 18:15), we can surely assume that the highest Jewish tribunal, the Sanhedrin of Jerusalem, could proceed likewise against *peregrini* who had been convicted of a crime which Jewish law punished with death; that is to say, that in certain circumstances it could also *pronounce* a death sentence. But we have no certain proof that it could *execute* death sentences, even against non-Roman citizens. Hence, the "right of the sword" was obviously reserved to the Roman procurator as sole bearer of the full imperial authority. In view of the unreliability and cruelty of native legal administration, such a restriction must have been most desirable.<sup>12</sup>

<sup>6</sup> *Antiquities* xiv. 10. 13 f., 16., 19. § 228-230, 231 f., 234, 240.

<sup>7</sup> *Antiquities* xiv. 10. 11 f. § 223-227.

<sup>8</sup> *Antiquities* xiv. 10. 6. § 204.

<sup>9</sup> *Antiquities* xix. 5. 2 f. § 284-291. That the Roman governor only came to Jerusalem as a guest, and actually resided in Cæsarea, was also a great concession.

<sup>10</sup> Acts 8:3; 9:2; 22:4, 19; 26:11.

<sup>11</sup> 2 Cor. 11:24.

<sup>12</sup> See Excursus VII.

Hence, if the sanhedrists wanted to have the death sentence against Jesus carried out, they had to turn to the procurator. Here certain questions arise which need to be cleared up. What was the procedure of the procurator in such a case? Did he have to recognize and execute without question a death sentence which had been legally passed by a Jewish court? Obviously not, for even if the Romans allowed the native authorities the right to judge a law-breaker independently, that definitely does not mean that they lent themselves to be the obedient henchmen of the Jewish courts.<sup>13</sup> They undoubtedly reserved the right to confirm a death sentence passed by a Jewish court. But the exercise of the right of confirmation was not possible unless the governor had first made himself acquainted independently with the subject of the conviction. Therefore, in such a case a new trial had to be carried out before the Roman court. Now, on which law was such a trial based—the Jewish or the Roman? It is frequently assumed that the procurator could elect to act by the one or the other, as he pleased, and that in Jesus' case the procurator had used the Jewish law as the standard to go on.<sup>14</sup> But, actually, it is most unlikely that a Roman judge should have bothered much about Jewish law, since this was based on completely different principles from

<sup>13</sup> In John 19:10 Pilate says, be it noted, to Jesus, whom the Jews regard as convicted of a capital crime against their law, that he possesses the power to execute Him or to release Him.

<sup>14</sup> SCHÜRER, I, 481; II, 209; J. FELTEN, *Neutestamentliche Zeitgeschichte*, I (2nd ed., 1925), 324; T. MOMMSEN, *Römisches Strafrecht* (1899), p. 240, n. 2; ZNW, 3 (1902), 199; finally, J. CANTINAT once more, "Jésus devant Pilate," *La Vie Spirituelle*, 86 (1952), 227-247, esp. 244. MOMMSEN relies upon Mark 15:2 and argues: If Pilate holds the Accused to be an innocent fanatic although He has confessed Himself to be the King of the Jews, then the crime will have to be dealt with according to Jewish law. But this conclusion is not convincing. As to why Pilate did not take the indictment seriously in spite of the admission of Jesus, one has to consider: 1. the restricting wording of this profession of Jesus (Mark 15:2) the explanation of which is given in John 19:34-37. 2. The remark, Mark 15:10, which implies that Pilate knew of the impure motives of the hierarchs. 3. The basically anti-Semitic attitude of the procurator. The fact that Jesus was charged before Pilate, not as a blasphemer, as the Sanhedrin trial would lead one to expect, but as King of the Jews, is sufficient proof that another law is now being used as the basis of the charge, namely, one which proceeded with particular severity against political crimes.

Roman law and required the learning of a scribe for its administration, a qualification which it is certain none of the procurators of Judea possessed. How little the Roman authorities were interested in Jewish law emerges clearly from three incidents handed down to us in the Acts of the Apostles. When Paul was denounced by the Jews of Corinth to the pro-consul Gallio, brother of the famous philosopher, Seneca, the Roman rejected the indictment with the declaration: "If these are questions of doctrine and of titles and of your Law, look to it yourselves; I have no wish to decide such matters" (Acts 18:15). Some years later the tribune Claudius Lysias took Paul under his protection in Jerusalem when he ascertained that the charges made by the Jews against that Roman citizen only related to controversial questions of Jewish Law and not to any offense punishable by death or imprisonment under Roman law (Acts 23:29). Similarly, Festus, the governor of Cæsarea, showed no particular interest in the case of Paul when he was convinced that the charges against the latter only concerned Jewish matters, and that there was no question of an offense against Roman law. Festus declared laconically that he was at a loss as to how to investigate such matters (Acts 25:18-20). In this connection reference is often made to the fact that the Romans permitted the Jews to punish with death anyone who transgressed the sacred confines of the Temple, even if he was a Roman citizen.<sup>15</sup> But here it is obviously a question of a special law, which even as such proves that on principle the Roman authorities did not take account of Jewish law. Moreover, the Jewish religious rites enjoyed the protection of the Roman state; hence offenses against the Jewish religious rites were also punishable under Roman law. This explains, for example, the fact that the procurator, Cumanus, executed a Roman soldier who had contemptuously

<sup>15</sup> *Jewish War* vi. 2. 4. § 126. Regarding the inscription found by CLERMONT-GANNEAU, see SCHÜRER, II, 272, n. 55. Photograph in A. DEISSMANN, *Licht vom Osten* (4th ed., 1923), p. 63. Cf. also E. J. BICKERMANN, "The Warning Inscriptions of Herod's Temple," *JQR*, 37 (1946/7), 387-405, and the further contributions by H. A. WOLFSON, *ibid.*, 38 (1947/8), 109 f., and S. ZEITLIN, *ibid.*, 111-116.

torn a scroll of the Torah.<sup>16</sup> The crime of which the Sanhedrists accused Jesus, namely, blasphemy, was not a crime against Jewish (external) *religious rites*, therefore it was not one of the crimes for the punishment of which Roman law provided.

Hence, the sanhedrists would have had a poor prospect of getting Jesus executed if they had brought the charge of blasphemy against Him before Pilate. They could only count on success if they were in a position to convince the governor that Jesus had committed a crime punishable by death under Roman law. And in fact, the charge of blasphemy played no further part in the trial which now followed (until the interjection reported in John 19:7). In its place, the accusation of high treason came to the fore. We must, therefore, distinguish two independent trials, a trial for a religious offense before the Sanhedrin and a trial for a political offense before the governor. Against the view that the trial before Pilate represented a formal trial it could be objected that the evangelists do not report sufficiently clearly a condemnation of Jesus by Pilate. Mark concludes his report of this trial with the words: "So Pilate . . . released to them Barabbas; but Jesus he scourged and delivered to be crucified" (Mark 15:15). Here however one must bear in mind the evangelists' popular manner of writing; in it one cannot expect to find legally exact terminology. It will be shown below that the words of Mark must in fact be understood as a description of the condemnation.

Now, if the proceedings before Pilate are to be regarded as a separate trial independent of that of the Sanhedrin, the question thrusts itself upon us whether in fact the Jewish trial had any meaning or importance at all. Why did the Sanhedrin organize and carry out a trial of Jesus if they knew in advance that a death sentence passed by them would be practically meaningless? Would it not have been simpler, and also more diplomatic in view of the hostility to be expected from the followers of Jesus, to have allowed the case to be dealt with exclusively by the Roman governor's court? The answer is that, in the first place, the Jews were tre-

<sup>16</sup> *Antiquities* xx. 5. 4. § 117.; *Jewish War* ii. 12. 2. § 231.

mendously keen, particularly during the time when their independence was curtailed, to apply their own law as far as possible, even if its application only had a theoretical meaning. And, in any case, a death sentence pronounced by the Jewish court was definitely not entirely devoid of practical value. For it was a means of exerting moral pressure on the Roman judge, and the Jews really did exert such pressure when they harangued the procurator later: "We have a Law, and according to that Law he must die" (John 19:7). So the sanhedrists could justify before their own consciences, so to speak, the ruthlessness with which they had pursued the case against Jesus before Pilate, on the plea that Jesus was definitely a criminal worthy of death. And last, but not least, a death sentence based on native Jewish law, which alone was popular, was a splendid means of influencing the masses against Jesus. The significance of the death sentence pronounced by the Sanhedrin is all the more unmistakable if we take the view of recent authors and regard the shouts of the Jewish populace during the Roman trial as the expression of a popular demand which the judge had to accede to as far as possible. Therefore it cannot be asserted that the right of the Sanhedrin to pronounce a death sentence was "quite obviously illusory,"<sup>17</sup> if the Sanhedrin had no right to execute and the procurator did not simply have to confirm the Jewish death sentence without re-examining the question, and to allow the Jews to carry it out, if he thought fit. It is not admissible simply to brand the co-existence of Jewish and Roman law as a juridical absurdity as Rosadi and Husband, for instance, have done.<sup>18</sup> To be sure, according to Roman law no person could be tried twice for the same offense, but this legal principle, sound in itself, obviously is intended to apply to the normal case of two Roman tribunals not limited in their competence. Moreover, in the case of Jesus, the second trial was for a different crime from the first one.

<sup>17</sup> P. GAECHTER, *ZkTh*, 78 (1956), 230. As to the theory that the shouts of the populace were expressions of feeling which the judge dared not simply ignore, see below p. 212, n. 20.

<sup>18</sup> ROSADI, *op. cit.*, p. 115; HUSBAND, *op. cit.*, p. 9.

As to why the Jews took their own legal proceedings against Jesus, one must realize that they were obviously not at all clear from the beginning regarding the legal basis upon which they would build up the intended death sentence. First they tried with the help of witnesses to convict Jesus; and among these witnesses were the ones who gave evidence of His utterance about the Temple. If it could have been proved that He had really threatened to attack the Temple, the sanhedrists would probably have been justified in hoping that the procurator would confirm and execute, without lengthy enquiries, a Jewish verdict based upon this charge; for on this indictment Jesus would also have been punishable according to Roman law (protection of sacred buildings). It could not have been foreseen—at least not with certainty—that blasphemy, a subject of no interest to the Roman judge, would happen to be the very charge brought to the fore by the Sanhedrin proceedings, a fact which would necessitate an entirely new trial. So now the Jews made a virtue of necessity, and with the sly dexterity of conjurers, turned the religious crime which was the ground for their own verdict into a political crime which the Roman court could not possibly let pass. This recasting of the indictment was doubtless one of the subjects of the resolution indicated by Mark in 15:1. It has been asserted that a decision to deliver Jesus up would have been superfluous, as surrender of the condemned prisoner to the procurator was the matter-of-course procedure.<sup>19</sup> Against this it can be argued that at least the formulation of the indictment required a special consultation and decision. Besides, the delivery to Pilate cannot be said to have been a procedure that was simply a matter of course, for, after all, the Jews could have contented themselves with the condemnation of Jesus by the Sanhedrin, that is to say, with excommunicating Him.

While the Sanhedrin represented a bench of judges, the Roman governor was one single judge. Those who usually sat with him on the bench, the junior barristers (*assessores*) and attendants

<sup>19</sup> AICHER, *op. cit.*, p. 49.

(*comites*), had no judicial powers; but only served as legal advisers. The proceedings, which were public on principle, were opened partly by an indictment on the part of a private person, a plaintiff or another interested party, and partly by a magisterial examination. The production of evidence was not bound to a formal procedure; on the contrary, the principle of free assessment of testimony was practiced. The statements of the accused and the evidence of witnesses were regarded as the chief source of proof. The hearing opened with a summoning of the parties. First the plaintiff uttered his indictment; then the accused made his defense. In a magisterial trial there were no addresses by the opposing parties, and the accused was examined by the magistrate instead. When the taking of evidence was concluded this was made known by the shout of a herald. After consulting with his assistants, the judge announced his verdict from the judgment seat, and the sentence had to be carried out immediately.<sup>20</sup>

In the eastern provinces of the empire, it is certain that Greek was the language most generally used in the administration of justice. It is frequently assumed that the proceedings between Jesus and Pilate were also carried on in that language, but the fact that the evangelists make no mention of interpreters is not enough to justify this assumption. A more likely ground for assuming that it was, is the fact that the Galileans for the most part grew up familiar with Greek. But one must also reckon with the possibility that Jesus used the Aramaic language and that His words were translated for the procurator by an interpreter, while the Greek utterances of the judge were translated into the language of the country; for only in this way could the public follow the proceedings. We know from Cicero<sup>21</sup> that the governors were accompanied by interpreters, and from Josephus<sup>22</sup> that the proc-

<sup>20</sup> R. VON MAYR, *op. cit.*, pp. 286-288; SCHÜRER, I, 469 f.

<sup>21</sup> *In Verrem* ii. 3. 37 and elsewhere.

<sup>22</sup> *Jewish War* v. 9. 2. § 361; vi. 2. 1. § 96 and elsewhere. Cf. R. O. P. TAYLOR, "Did Jesus speak Aramaic?" *ExpT*, 56 (1944/5), 95-97, and the contributions to the discussion *ibid.*, pp. 305, 327, 328; H. BIRKELAND, *The Language of Jesus* (1954).

urators conducted their legal proceedings with the natives through interpreters.

The procurators of the province of Judea resided in Cæsarea Maritima.<sup>23</sup> When they came to Jerusalem on special occasions, particularly at the great Jewish festivals, they took up quarters in the palace of Herod, which was situated in the northwest of the city. It is recorded explicitly of the procurator, Gessius Florus, that he lived there and held his court on the public square in front of the building.<sup>24</sup> That Pilate, too, was in the habit of doing this may be deduced from the information that he had gilded votive tablets erected in the royal palace.<sup>25</sup> The evangelists call the place in which the Roman trial of Jesus took place "the prætorium"<sup>26</sup> which in this context can only mean "the official residence of the governor." The disputed question, where the prætorium of Pilate was, i.e., whether it is to be taken as being the fortress Antonia which was situated northwest of the Temple, or whether it was identical with the palace of Herod, is doubtless best answered in favor of the latter location.<sup>27</sup> The strongly fortified and handsomely equipped palace of the Herods, one of the mighty towers of which is still standing today, was therefore the scene of the dramatic happenings which led to the final condemnation of Jesus.

If Pilate arrived in Jerusalem just before the Passover, doubtless his first intention in doing so was to prevent or crush in time the riots and tumults which arose during those days among the crowds who gathered from far and near.<sup>28</sup> Naturally, at the same time, he utilized his sojourn in the city to dispose of legal cases which had accumulated.

The Romans usually began their legal trials shortly after sun-

<sup>23</sup> *Antiquities* xviii. 3. 1. § 55-59; *Jewish War* ii. 9. 2. § 171 (Pilate); *Antiquities* xx. 5. 4. § 116; *Jewish War* ii. 12. 2. § 230 (Cumanus); Acts 23:23-33 (Felix); 25:1-13 (Festus); *Jewish War* ii. 14. 4. § 288; ii. 15. 6. § 332; ii. 17. 1. § 407 (Florus). Tacitus *Historiæ* ii. 78 therefore names Cæsarea "*Iudææ caput*."

<sup>24</sup> *Jewish War* ii. 14. 8. § 301; ii. 15. 5. § 328.

<sup>25</sup> Philo *Leg. ad Caium* 38 § 299; *ibid.* 39 § 306 calls Herod's palace "House of the Governors."

<sup>26</sup> Mark 15:16; Matt. 27:27; John 18:28, 33; 19:9.

<sup>27</sup> See Excursus VIII.

<sup>28</sup> Cf. SCHÜRER, I, 458.

rise.<sup>29</sup> That may have been one reason why the sanhedrists carried through their own proceedings in the night. When the session ended, presumably toward six in the morning, they bound Jesus again (Mark 15:1), as He had to be conducted through the city. Having hitherto functioned as judges, they now proposed to appear as prosecutors, and doubtless some of them also as witnesses, before the forum of the governor.<sup>30</sup> That was why they themselves conducted the prisoner to the official residence of the procurator.

And so it comes to that momentous encounter between Jesus and Pilate. In contrast to the other procurators of Judea, of whom in many instances we know no more than the name, we are fairly closely informed about Pilate.

#### EXCURSUS VIII

##### *Where Was Pilate's Prætorium Situated?*

IT WAS the custom of the imperial governors in the provinces of the Roman empire to choose for their official residence the home of the former native ruler. Thus, the procurator, Felix (60-62 A.D.), lived in the palace of Herod in Cæsarea (Acts 23:35). The residence of the governor was called the prætorium (Acts 23:35). The word originally designated the camp tent of the *prætor* or army leader. In the tent was a platform in the middle of which stood the judgment seat (*sella curulis*), on which the *prætor* sat when administering justice. Later the tribunal was erected in a suitable public place.

The building in, or in front of which, Jesus was examined and condemned by Pilate, is also called the prætorium in the gospels (Mark 15:16; Matt. 27:27; John 18:28, 33; 19:9).

The gospels give no closer details regarding the position of this building, nevertheless they contain some hints:

a. The prætorium must have been situated within the city walls in a high-lying part of the city, because Jesus is "led out" of Jerusalem to be crucified (Mark 15:20) and the crowd came "up" to Pilate (Mark 15:8).

<sup>29</sup> Seneca *De ira* ii. 7. 3: "Hæc tot milia ad forum prima luce properantia quam turpes lites, quanto turpiores advocatos habent"! Macrobius *Sat.* 1.3: "Magistratus post mediam noctem auspicantur, et post exortum solem agunt." See further J. CARCOPINO, *La vie quotidienne à Rome* (1939), pp. 218 ff.

<sup>30</sup> For the legal position of the sanhedrists as plaintiffs before the governor's court, cf. STEINWENTER, *op. cit.*, p. 485.

b. In front of the actual building inside which Jesus was examined by Pilate (John 18:28) and mocked by the soldiers (Mark 15:16), was the square with the judgment seat which was called in Aramaic *Gabbatha* and in Greek *Λιθόστρωτον* (John 19:13). The Aramaic word cannot be translated with certainty (P. BENOIT, "Prétoire, Lithostroton et Gabbatha," RBibl, 59 [1952], 548 reads "saddle," "hump," "height"; C. C. TORREY, "Studies in the Aramaic of the First Century A.D.," ZAW, 65 [1953], 332 f. reads "dish," "platter"). The Greek word, on the contrary ("stone pavement"), indicates a place or square notable for its ground formed of paving stones.

There are four different hypotheses concerning the location of the *prætorium*:

1. From the fourth to the seventh century the *prætorium* was sought in the Tyropœon Valley, where there was a shrine called after Pilate which later was turned into the Church of St. Sophia (destroyed by the Persians in the year 614). Today a courthouse stands there, between Wilson Arch and the Wailing Wall. Some advocates of this tradition in modern times are D. ZANECCHIA, *La Palestina d'oggi*, I (1896), 250; A. LEGENDRE, "Prétoire," DictB, V, 621-640; C. MOMMERT, *Das Prætorium des Pilatus* (1903); J. SCHÄFER in SCHUSTER-HOLZAMMER, II (6th ed., 1906), 457-461.

2. In the time of the Crusades the *prætorium* shifted in popular tradition to Mount Sion, near the *Cœnaculum*, and the palace of Caiphas, which is likewise traditionally located there. This view was founded on a textual variant on the Latin Vulgate version of the verse John 18:28: "adducunt ergo Iesum ad Caiphan in *prætorium*" (instead of "a Caipha". Today it has been rightly abandoned.

3. A tradition now seven or eight centuries old holds that the fortress Antonia was the *prætorium* of Pilate. This fortress, which was perched on a solitary rock some eighty feet high that stood to the northwest of the Temple, was built by King Herod, who called it Antonia after his patron, Mark Antony. According to the description Josephus gives of it, it must have been a magnificent building: "The interior, like a palace, contained apartments which varied in equipment and use—courtyards with colonnades, baths and drill yards for the garrison. The whole was like a town, but the magnificence of the building made it look more like a royal palace" (*The Jewish War* v. 5. 8. § 241). Today the site is occupied by an ordinary building which formerly served as a Turkish barracks but is now a Mohammedan school. Recent excavations have disclosed the fact that in the center of the Antonia fortress there was a large inner courtyard measuring some 2500 square metres (seven acres or thereabouts) paved with limestone flags each measuring over a square yard. Most of the paving stones are still intact. Since it can be shown that they date from the first century A.D.—Herod Agrippa used similar stones for paving the principal streets—it seems that this square was the *Lithostroton*, more especially as it was one of the high-lying parts of the city. Normally the procurators lived in Herod's palace, but one can understand Pilate moving his quarters at

Easter to the fortress Antonia, which was right beside the Temple. For he wished to be on the spot in order to quell forthwith possible disturbances at this time, when pilgrims streamed into the Temple precincts from all parts. In fact it appears that Ventidius Cumanus, who was procurator from 48 to 52 A.D., was actually in residence in the Antonia fortress when a revolt broke out among the Jews assembled in the Temple precincts owing to the improper and provocative act of a Roman soldier (*Antiquities* xx. 5. 3. § 110; *Jewish War* ii. 12. 1. § 226). The site of the former fortress Antonia is the starting point nowadays of the Stations of the Cross, which are held every Friday. The following have declared themselves in favor of the Antonia hypothesis: B. MEISTERMANN, *Le Prétoire de Pilate et la forteresse Antonia* (1902); C. SACHSE, "Golgotha und das Prætorium des Pilatus," ZNW, 19 (1919/1920), 29-38; C. LATTEY, "The Prætorium of Pilate," JThSt, 31 (1930), 180-182; A. T. OLMSTEAD, *Jesus in the Light of History* (1942), pp. 228-231; L. H. VINCENT, "L'Antonia et le Prétoire," RBibl, 42 (1933), 83-113; and "Le Lithostrotos évangélique," *ibid.*, 59 (1952), 513-530; G.-M. PERELLA, *I Luoghi Santi* (1936), pp. 303-330; J.-M. VOSTÉ, *De passione et morte Iesu Christi* (1937), pp. 177-182; M.-J. LAGRANGE, *The Gospel of Jesus Christ* (1943), II, 250; Cardinal Theodor INNITZER, *Leidens- und Verklärungsgeschichte Jesu Christ* (4th ed., 1948), p. 188; G. RICCIOTTI, *The Life of Christ* (1947), pp. 610-612; J. LEBRETON, DictB, Supplement IV (1949), 1049 f.; H. DANIEL-ROPS, *Jesus and His Times* (1954), pp. 505-508; R. SCHMITTEIN, *Umstände und Ursache von Jesu Tod* (1951), pp. 61 f.; A. MANASSERO, *Ecce Homo* (1952), pp. 166-171; J. STARCKY, "Lithostrotos," DictB, Supplement V (1952), 398-405; and others.

4. A no less impressive number of scholars identify the prætorium with the palace of Herod on the west hill of Jerusalem, south of the Jaffa Gate. Good reasons can be advanced for this: the procurators' custom of making the palace of the former king their own residence (cf. Acts 23:35); the fact that the palace was situated on a height (cf. *Jewish War* ii. 15. 2. § 310; ii. 17. 6. § 429), the statement of Josephus that Gessius Florus lived in Herod's palace and held court in front of it (*Jewish War* ii. 14. 8. § 301; cf. ii. 15. 1 f. § 314 f.), and especially the statement of Philo that Pilate had gilded tablets erected in the palace of Herod in Jerusalem (*Leg. ad Caium* 28. § 299) from which it is to be concluded that Pilate lived there. That this was really true, not only of Pilate, but also of all the governors of Judea, emerges from the remark of Philo immediately following, in which he calls the palace of Herod "the governor's house" (*ibid.* 39. § 306). For this location, which admittedly is not based upon an ancient tradition, the following, among others, have declared: SCHÜRER, I, 458; J. KREYENBÜHL, "Der Ort der Verurteilung Jesu," ZNW, 3 (1902), 15-22; J. VAN BEBBER, "Das Prætorium des Pilatus," TQ, 87 (1905), 209-230; Th. ZAHN, *Evangelium des Johannes* (1908), pp. 620 f.; R. ECKARDT, "Das Prætorium des Pilatus," *Zeitschrift des Deutschen Palästinavereins*, 34 (1911), 39-48; K. KASTNER, *Jesus vor Pilatus* (1912), pp. 111 ff.; J. E. BELSER, *Geschichte des Leidens und Sterbens*, etc. (2nd ed., 1913), p. 341; F. M. ABEL, *Jérusalem*

*Nouvelle*, II (1922), 562-586; BILLERBECK, I, 1035 f.; G. DALMAN, *Jerusalem und sein Gelände* (1930), p. 86; F. HAUCK, *Evangelium des Markus* (1931), p. 185; J. KLAUSNER, *Jesus von Nazareth* (2nd ed., 1934), p. 478; E. KLOSTERMANN, *Das Markus-Evangelium* (3rd ed., 1936), p. 158; M. DIBELIUS, *Jesus* (1939), p. 117; J. SCHMID, *Das Evangelium nach Markus* (3rd ed., 1954), p. 293; G. BORNKAMM, *Jesus von Nazareth* (1956), p. 193. That this view is the best founded one has been demonstrated fully and convincingly by Père BENOIT, *op. cit.*, pp. 531-550.

## 8. PONTIUS PILATE

HE was of an unbending and ruthlessly hard character." In his time "corruption, violence, robbery, oppression, humiliations, constant executions without trial, and unlimited, intolerable cruelty," were the order of the day in Judea. In a letter to his imperial friend and patron Caligula, King Herod Agrippa I described in the above words the personality and actions of Pilate.<sup>1</sup> It is said that in this depressing description Agrippa was not quite just to the procurator who, at that time, had already played his role and left the stage. But other more reliable testimonies also show in a far from favorable light the man who was destined to come down in history as the judge of Jesus.

Pilate, who came to Judea in the year 26 A.D. as the fifth Roman procurator, and was in office ten years, already showed the Jews the mailed fist at his entry into office. Up till then the Roman troops had always refrained from carrying banners or insignia with the emperor's picture on them when entering Jerusalem, out of consideration for the religious sensibilities of the Jews.<sup>2</sup> Apparently the new governor regarded this as a most uncalled-for sign of weakness. He made his troops march in by night with the usual flags. When the inhabitants of Jerusalem and the district saw this unwelcome sight the next day, they became frightfully excited. They streamed out to Cæsarea, where the governor resided, and implored him to remove these emblems from the holy city and to continue to respect their ancient rights. For five days and five nights they stood in front of the procurator's palace; but he

<sup>1</sup> Philo *Leg. ad Caium* 38. § 301 f.

<sup>2</sup> Cf. Ex. 20:4. Later (37 A.D.), the prefect Vitellius magnanimously considered this Jewish objection: *Antiquities* xviii. 5. 3. § 121 f.

declared that he would have them hewn down if they insisted upon their demand, which he asserted was an offense to the emperor. Finally, on the sixth day, he ordered the demonstrators into the hippodrome, where he had a detachment of troops held secretly in readiness. When the Jews continued to storm him with their petitions he made a sign to the soldiers, who thereupon surrounded the crowd with their naked swords. But the effect was other than that which the newcomer had expected. As if by a pre-arranged agreement the Jews fell on their faces, bared their necks, and shouted that they preferred to allow themselves to be slaughtered than to tolerate that infringement of the Law. So Pilate had no choice but to give in and order the removal of the banners from the city.<sup>3</sup>

Later he incited the populace against him in a somewhat similar matter. With the motive "of distressing the people more than of honoring Tiberius," he set up, in the former palace of Herod in Jerusalem, gilded votive tablets which bore the name of the emperor, though they did not bear his image. When he turned a deaf ear to representations made to him by prominent Jews, including four sons of Herod, the Jews appealed to Emperor Tiberius. The latter expressed the strongest disapproval of Pilate's action and ordered his obstinate official to remove the tablets from Jerusalem and set them up in the Temple of Augustus at Cæsarea instead.<sup>4</sup>

<sup>3</sup> *Jewish War* ii. 9. 2 f. § 169-174; *Antiquities* xviii. 3. 1. § 55-59. Cf. C. H. KRAELING, "The Episode of the Roman Standards at Jerusalem," *HThR*, 35 (1942), 263-289, who rightly places the incident in the late autumn of the year 26 A.D. (p. 283). Apparently the day of the withdrawal of the standards was the third of Kislev (end of November). The following note on the Fasting Scroll probably refers to it: "On the third of Kislev the pictures were removed from the Temple forecourt" (*Meg. Taanit* IX—§ 22 LICHTENSTEIN). This is the interpretation of FRANKEL, DALMAN, ZEITLIN and SCHLATTER, and finally of H. LICHTENSTEIN, *Die Fastenrolle* (1931/32) p. 299, and KRAELING, *op. cit.*, p. 283. The assertion that the pictures had been brought into the forecourt of the Temple, which is to be found in various forms in the writings of Origen (PG 13, 1549), Jerome (PL 26, 177), and Eusebius (PG 22, 630 f., quoting Philo), is probably a tendentious exaggeration of the fact that the *Signa* were erected in the fortress Antonia, which abutted on the Temple precincts. In this connection cf. G. R. BEASLEY-MURRAY, *Jesus and the Future* (1954), p. 92.

<sup>4</sup> Philo *Leg. ad Caium* 38. § 299-305.

The third conflict with the Jews of which we have details was caused by Pilate's action in taking money from the Temple treasury for the construction of a water conduit to Jerusalem. Once, during that period, when he was staying in the Jewish capital, crowds gathered and gave voice in loud lamentations and cries to their indignation at his sacrilegious encroachment on the holy treasure. But he had got wind of the intended demonstration, and he ordered his soldiers to mingle among the crowd dressed as civilians and armed with hidden cudgels. When the shouts of protest grew louder and louder the soldiers, on a pre-arranged sign, drew the cudgels from under their tunics and started a merciless onslaught on the crowd, killing many of them.<sup>5</sup>

Another bloody deed of Pilate is mentioned casually in the New Testament. According to this report, he had had a group of Galileans slaughtered as they offered sacrifice in the forecourt of the Temple (Luke 13:1 f.). The incident must have taken place on the eve of a Passover feast which Jesus had not spent in Jerusalem; hence it can only have been the second Passover of His public life (John 6:4).<sup>6</sup> Perhaps the men belonged to the rebel organization of Zealots.<sup>7</sup> But we have no details.

His brutal treatment of the Samaritans finally lost Pilate his office. In the year 36 A.D. a Samaritan pseudo prophet pledged himself to show his followers the sacred vessels which according to tradition Moses had buried on Mount Garizim, whereupon swarms of armed Samaritans congregated at the foot of the mountain. Pilate hurriedly sent a detachment of troops to disperse the crowd. Those who failed to make off were killed or taken prisoner. The more prominent prisoners were later executed. The Samaritans, who were definitely not inimical to Roman rule,

<sup>5</sup> *Antiquities* xviii. 3. 2. § 60-62; *Jewish War* ii. 9. 4. § 175-177.

<sup>6</sup> Cf. J. BLINZLER, "Eine Bemerkung zum Geschichtsrahmen des Johannesevangeliums," *Bibl*, 36 (1955), 20-35. CULLMANN's (*op. cit.*) interpretation of Luke 13:1 (that the "sacrifices" are human-beings) is untenable, even on merely linguistic grounds.

<sup>7</sup> Are they perchance connected with the Galileans who wanted to make Jesus king by force a few days before (John 6:15)? See J. BLINZLER, "Die Niedermetzlung von Galiläern durch Pilatus," *Novum Testamentum*, 2 (1957), 24-49, esp. 43 ff.

complained to Vitellius, prefect of Syria, who shortly afterward ordered the brutal procurator to proceed to Rome to answer for his deeds, and entrusted the governorship of Judea to one Marcellus.<sup>8</sup>

In origin, Pilate apparently belonged to the old Samnite family of the Pontii which had won fame in the Samnite wars against Rome.<sup>9</sup> A member of this family, L. Pontius Aquilius, had taken part in the murder of Julius Cæsar; some other Pontii were con-

<sup>8</sup> *Antiquities* xviii. 4. 1 f. § 85-89. The procurators were nominated by the emperor himself, hence Marcellus can only have been an acting administrator (*ἐπιμελητής*) at first. Now, as Josephus records, *Antiquities* xviii. 6. 10. § 237, that immediately after the death of Tiberius, Caligula had named one "Marullus" as commander in chief, *ὑπαρχος*, (*varia lectio*: *ὑπάρχης*), in Judea it may be assumed that this man was identical with the Marcellus appointed on a temporary basis by Vitellius, and that Josephus had merely recorded the name wrongly. Chronology: Pilate only arrived in Rome after the death of Tiberius (March 16, 37) although he hastened there, as was necessary (cf. *Cassius Dio* liii. 15. 6) and as Josephus also explicitly assures us (*Antiquities* xviii. 4. 2. § 89). Hence it is impossible to place his recall (SCHÜRER, I, 492-494) in the period before Easter, 36. It must, on the contrary, have taken place at the end of 36 or the beginning of 37. According to *Antiquities* xviii. 4. 3. § 95, Vitellius deposed the high priest Caiphas at the next Passover in Jerusalem, i.e., Easter, 37—and nominated Jonathan to succeed him. Jonathan in his turn was deprived of office when Vitellius came to Jerusalem again at the time of a (pilgrimage) feast not specified more closely. Since the news of the death of Tiberius arrived on his fourth day there (*Antiquities* xviii. 5. 3. § 122-124), it can only have been round Whitsuntide, 37. This dating, already suggested by J. JEREMIAS, *Jerusalem zur Zeit Jesu*, II (1937), 55, n. 8, deserves preference to all the other suggested datings. Against SCHÜRER's dating (deposition of Caiphas, Passover, 36, and of Pilate some time before) there are two main improbabilities. The first is that Pilate should have let almost a year pass before setting out on his journey to Rome. The second is that the emperor's confirmation of the new procurator should have been delayed for a year and several months! According to U. HOLZMEISTER, *Chronologia vitæ Christi* (1933), pp. 52-55, and E. MIREAUX, *La reine Bérénice* (1951) p. 231, Pilate was deprived of office before the Feast of Tabernacles, 36, Caiphas on that feast itself, and Jonathan at Passover, 37. But Josephus calls the feast at which Caiphas was deposed Passover and leaves unspecified the feast at which Jonathan was deprived of office. The same objection applies to E. M. SMALLWOOD's dating ("The Date of the Dismissal of Pontius Pilate from Judaea," *Journal of Jewish Studies*, 5 [1954], 12-21): Pilate's journey to Rome, second half of December, 36; first visit to Jerusalem of Vitellius, end of 36 or beginning of 37; second visit, Passover, 37.

<sup>9</sup> Cf. M. J. OLLIVIER, "Ponce Pilate et les Pontii," *RB*, 5 (1896), 247-254, 594-600; S. GAROFALO, "Ponzio Pilato, Procuratore della Giudea," *Quaderni Assoc. Cult. Italiana*, 9 (1952), 53-70; E. FASCHER, "Pilatus (Pontius)," *PWR* (1950), 1322 f. What ROSADI, *op. cit.*, pp. 170-172, and BUNCH, *op. cit.*, pp. 112 f., have to tell of the Spanish origin of Pilate, his youth and marriage, is legend.

suls under Tiberius Cæsar. Hence Pilate was obviously of knightly family. His wife, whose name was Procula according to tradition, was with him in Judea. Previously, wives of governors had not been permitted to accompany their husbands to the provinces of the empire, but this prohibition had ceased to be observed from the time of Augustus.<sup>10</sup> It is surprising that Tiberius should have entrusted the governorship of Judea to an obviously anti-Jewish official. But apparently the anti-Semitic Seianus, who was supreme prefect, dictated imperial policy from 25 A.D., and was responsible for various anti-Jewish measures, nominated him.<sup>11</sup> The anti-Jewish trend of imperial policy ended with the downfall and execution of Seianus on the eighteenth of October, 31. Schürer therefore assumes that the conflict over the votive tablets, which had earned Pilate a censure from the emperor, took place after October of the year 31.<sup>12</sup> Some have sought to determine the year of the death of Jesus from the date of the fall of Seianus. From the demeanor of the Jews at the trial of Jesus (John 19:12) several authors conclude that at that time Tiberius was no longer unfavorably disposed toward the Jews, that is to say, that he had already disposed of his counselor then.<sup>13</sup> This would bring the trial of Jesus up to a date not earlier than Easter of the year 32.

<sup>10</sup> Tacitus *Annals* iii. 33 f.

<sup>11</sup> Philo *Leg. ad Caium* 24. § 159 f.

<sup>12</sup> SCHÜRER, I, 491, 492, n. 147. One can argue just as well the other way round. After 31 Pilate was doubtless more careful not to provoke the Jews unnecessarily. His obvious vacillation in the matter of coinage policy is significant. See E. STAUFFER, *Christus und die Cæsaren* (2nd ed., 1948), p. 127; *idem*, "Zur Münzprägung des Pontius Pilatus," *La Nouvelle Clio*, 1/2, (1940/1950), 495-514, esp. p. 508; E. Bammel, "Syrian Coinage and Pilate," *Journal of Jewish Studies*, 2 (1951), 108-110. According to this study Pilate was the only procurator of Judea who—from 29 A.D.—had had the audacity to mint copper coins imprinted with the crook and the dipper, the two emblems of the imperial oracular powers, and hence of polytheistic worship. The minting of this provocative coinage ceased forthwith after the downfall of Seianus.

<sup>13</sup> In this vein, E. Bammel, "Philos tou Kaisaros," *ThLZ*, 77 (1952), 205-210, but esp. 208: Only after the fall of Seianus, whose favorite Pilate had been, could the words recorded in John 19:12 have had the potential force of a sharp sword; and P. GAECHTER, *ZkTh*, 78 (1956), 232. Cf. also A. D. DOYLE, "Pilate's Career and the Date of the Crucifixion," *JThSt*, 42 (1941), 190-193, who holds 33 to be the year of the death of Jesus.

But the implied threat of the Jews and the timidity and hesitation of Pilate could be understood even in the Seianus era.<sup>14</sup>

When Pilate reached Rome after his deposition, Tiberius had just died (March 16, 37).<sup>15</sup> The remainder of the life of the judge of Jesus is unrecorded. Many things point, however, to his having died an unusual death, either by suicide or by execution, or at least in banishment.<sup>16</sup>

The picture which Philo and Josephus draw of the character and deeds of Pilate seems to be completely irreconcilable with the picture which emerges from the passion narratives of the gospels. If Pilate really was the cruel and bloodthirsty monster that the first-named authors assert he was, it is difficult to believe that he should have had scruples about crucifying an insignificant provincial like Jesus; and if he really was as inflexible as they say, it is difficult to understand how he should have allowed himself to be finally intimidated into passing sentence of death. This discrepancy has often led to the conclusion that the gospel narratives are unhistorical.<sup>17</sup> This conclusion is unjustified, however. It is beyond doubt that these two Jewish writers give a somewhat biased picture of Pilate. If that official had been as corrupt, un-

<sup>14</sup> Cf. p. 236 below. Also P. W. SCHMIDT, *Geschichte Jesu*, II (1904), 226; K. KASTNER, *Jesus vor Pilatus* (1912), p. 18, n. 2; BELSER, *op. cit.*, p. 350.

<sup>15</sup> *Antiquities* xviii. 4. 2. § 89.

<sup>16</sup> See SCHÜRER, I, 492, n. 15. SCHÜRER regards as Christian legend the tradition that Pilate committed suicide. Ed. MEYER, on the other hand (I, 205), regards it as a historical fact that Pilate committed suicide in 39 A.D., to avoid the condemnation which threatened him under Caius. Cf. also S. LIBERTY, "The Importance of Pontius Pilate in Creed and Gospel," *JThSt*, 45 (1945), 38-56; A. EHRHARDT, "Was Pilate a Christian?" *CQR*, 137 (1944), 157-167, as also "Pontius Pilatus in der frühchristlichen Mythologie," *EvanT*, 9 (1949/50), 433-447.

<sup>17</sup> Cf., for instance, KLAUSNER, *op. cit.*, pp. 481 f.: "Alle Nachrichten des Josephus und Philo über Pilatus schildern ihn als einen blutdürstigen und grausamen Tyrannen, für den die Hinrichtung eines galiläischen Juden nicht mehr bedeuten konnte als die Tötung einer Fliege und der geradezu seine Freude daran hatte, die Juden auf alle mögliche Weise zu kränken. Im Falle Jesu aber sollte er plötzlich ein sanftmütiger und friedliebender Mensch gewesen sein, der Blutvergiessen vermeiden will und einen Gerechten zu retten sucht, der durch seine Gerechtigkeit zugrunde geht? All das ist höchst unwahrscheinlich. In Wahrheit sind alle Berichte über den Widerstand des Pilatus, Jesus kreuzigen zu lassen, völlig unhistorisch."

scrupulous and cruel as they make him, Tiberius would not have left him in office ten years.<sup>18</sup> The attitude of Josephus and, still more, that of Philo toward Pilate is definitely hostile; they pick out only the deeds and episodes which show the procurator in an unfavorable light and magnify his real or alleged crimes.<sup>19</sup> On the other hand, one would be wrong in assuming from the gospel narratives that in his effort to save Jesus, Pilate had allowed himself to be guided mainly by motives of justice and humanity. On the contrary, the overriding motive of his actions was doubtless that anti-Jewish bias to which both Philo and Josephus bear testimony. Because he despised the Jews and eagerly availed of every opportunity of letting them see it, he inevitably adopted an attitude of opposition when he received the strange and unreasonable request to condemn and execute without more ado the prisoner they brought before him. His resistance and mistrust inevitably increased when he ascertained that the Accused was to be sent to His death on account of a political offense, of all things! So the representatives of this obstreperous and rebellious race were trying to persuade him that they were acting purely out of loyalty to Rome! It did not require any particular sagacity on Pilate's part to realize that some quite different motives must lie behind the Sanhedrin's demand.<sup>20</sup> They wanted to get rid of someone who had become obnoxious to them, and he, the Roman official, was to serve as their tool in this. Seen in this light, the resistance of Pilate to the Jews' demand is completely understandable. And he was certainly further strengthened in this attitude when he had gained a somewhat closer acquaintance with the Accused in the course of his examination<sup>21</sup> and had definitely established that

<sup>18</sup> E. VON DOBSCHÜTZ, "Pilate," PER, XV (3rd ed., 1904), 399, and FASCHER, *op. cit.*, 1322 f., also make the same point.

<sup>19</sup> Cf. esp. E. VON DOBSCHÜTZ, *op. cit.*, 398-400, on this point.

<sup>20</sup> Commenting on Mark 15:10, that Pilate "knew that the chief priests had delivered Him up out of envy," KLAUSNER, *op. cit.*, p. 480, asks: "How did he know that?" H. VAN DER LOOS, *op. cit.*, p. 189, rightly calls this question "extremely naïve."

<sup>21</sup> Cf. also PICKL, *op. cit.*, 109: "Offenbar hat die äussere Gestalt, die Harmonie und Hoheit der Persönlichkeit Jesu, sein Bildungsgrad und sein Auftreten auch auf

He was anything at all but a political agitator. If Pilate nevertheless capitulated to the Jews, this was by no means a contradiction of the stubbornness and brutality emphasized by both Philo and Josephus; for the outcome of the army banners episode alone suffices to show that he was definitely capable of giving in whenever further resistance appeared hopeless or dangerous. Hence, the efforts to play off the picture of Pilate in Philo and Josephus against that which emerges from the gospel narratives, are inadmissible.

#### EXCURSUS IX

#### *The Gospel Accounts of the Trial before Pilate*

ALL FOUR evangelists give an account of the proceedings before Pilate; nevertheless they do not represent one single tradition. The synoptics' accounts are comparatively brief. Matthew and Luke base theirs on Mark's narrative, which consists of three sections: *a.* the brief examination of Jesus by Pilate and the accusations of the Jews; *b.* the unsuccessful effort of Pilate to save Jesus by means of the Easter amnesty; *c.* the condemnation of Jesus in response to the persistent agitation of the populace. Matthew amplifies scene *b.* by insertion of the episode of the intervention of Pilate's wife, and scene *c.* by the hand-washing episode. Luke gives after scene *a.* a full report of the sending of Jesus to Herod Antipas; on the other hand, he omits the first part of Mark's scene *b.* but unlike Mark, makes Pilate twice over propose scourging Jesus and then letting Him free. John's narrative, which is far fuller than the synoptics' narratives and very independent of these, comprises the following six separate scenes: *a.* the dialogue between Pilate and the Jews in front of the praetorium; *b.* the first conversation between Jesus and Pilate (compare scene *a.* in Mark) within the praetorium; *c.* failure of the proposed Easter amnesty (compare scene *b.* in Mark); *d.* the scourging, the mocking and the exhibition of Jesus to the populace; *e.* second conversation between Jesus and Pilate; *f.* condemnation of Jesus in response to the persistent demand of the populace (compare scene *c.* in Mark).

John's most striking divergence from the narratives of the synoptics is his account of the lengthy dialogues in the form of question and answer between Jesus and Pilate. According to Mark, Jesus answered with a brief

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den weltgewandten, gebildeten römischen obersten Verwaltungsbeamten Eindruck gemacht." Similarly H. VAN DER LOOS, *op. cit.*, pp. 188 f.

"Thou sayest it" the procurator's question as to whether He is the king of the Jews, but made no further answer, so that Pilate wondered (Mark 15:5). The same applies to the several changes of scene in John. While one gets the impression from the synoptics that the whole proceedings took place out of doors on the public square in front of the *prætorium*, John makes the trial take place alternately outside and inside the *prætorium*. Historical criticism usually gives the synoptic account the preference. Such critics assert that John makes use of a literary device which enables him to put into the mouth of Jesus declarations which those who knew the synoptics' reports would never have expected from Him (M. GOGUEL, *Jésus* [2nd ed., 1950], p. 432). They point out that the alleged scenes between Jesus and Pilate took place without witnesses within the *prætorium* and hence could not have come to the knowledge of the evangelist. They emphasize, moreover, that the utterances which the Fourth Evangelist puts in the mouth of Jesus bear the clear stamp of his theology and terminology (cf. also in this connection A. WIKENHAUSER, *Das Evangelium nach Johannes* [1948], p. 22). It cannot be denied that these observations have some weight. Anyone seeking to reconstruct the course of events has to guard against pressing home too strongly the wording of the Johannine utterances before Pilate. As for the outer framework, however, it cannot be maintained that the several changes of place in John are historically unthinkable or irreconcilable with the synoptic account. If the synoptics' picture of Pilate is correct, then one can very well understand that the procurator, in his repugnance for the Jews in general and for their stormy insistence on the condemnation of Jesus in particular, decided to go into the matter thoroughly himself and to examine the Accused without the disturbing presence of the accusers and the excited mob (cf. Chrysostom's *Homily on John* 18. 37; PG 59, 455). From the point of view of the legal historian, too, this procedure could not be called either unusual or inadmissible (cf. BICKERMANN, *op. cit.*, pp. 222 f.). And finally, the synoptics, whose accounts are undoubtedly of a very summary kind, do not actually exclude the possibility that further hearings within the *prætorium* followed the brief public questioning of Jesus at the beginning of the proceedings. So it all boils down to the question of whether the evangelist can have obtained a knowledge of the subject matter of those conversations. Conservative exegetes are wont to point out that in view of the publicity of Roman legal proceedings, even the conversations within the *prætorium* cannot have been purely private conversations *tête à tête*, but must have taken place in the presence of others. In any case the official lawyers and attendants of the procurator would have been present. Besides these, anyone who wanted to could have gained admission to the *prætorium*, and it could not have been difficult for the Christian community, who later sought information about the last words of their Master, to have found out such eyewitnesses of the proceedings. The assertion that it is impossible that John should have gained a sure knowledge of those indoor proceedings cannot be maintained in any case. One does not need to assume either, as does J. BELSER

(*Geschichte des Leidens und Sterbens* [2nd ed., 1913], p. 355), that Jesus Himself informed His disciples of them during the forty days between His Resurrection and His Ascension. That John's most important and most detailed report of a nonpublic conversation between Pilate and Jesus (John 18:33-38) is based upon reliable tradition can be demonstrated by a comparison of that passage with Mark's narrative (see *below* pp. 191 f.).

## 9. THE FIRST PROCEEDINGS BEFORE PILATE

HAVING ARRIVED in front of the *prætorium*, the sanhedrists had Jesus handed over to the governor by court attendants. They themselves did not enter the building, for by doing so that would have incurred ritual defilement which would have precluded them from partaking of the paschal lamb (John 18:28).<sup>1</sup>

When Pilate, who was certainly familiar with this ritual peculiarity of the Jews, came out to them,<sup>2</sup> a dialogue took place between him and the Jewish leaders, which John reproduces in the following words:

"What accusation do you bring against this man?"

"If he were not a criminal we would not have handed him over to thee."

"Take him yourselves and judge him according to your law."

"It is not lawful for us to put anyone to death"—John 18:29-31.

So the procurator asks, in accordance with the law, what the charge against Jesus is. To this the Jews reply in a remarkably surly manner. Why does the question embarrass them? At the beginning of the hearing of Jesus, Pilate shows himself thoroughly well-informed concerning the essential point of the accusation, although the evangelist does not report that the Jews had informed him concerning it. Hence it may be assumed that when

<sup>1</sup> *Mishna Ohaloth* XVIII, 7; Acts 10:28; 11:3.

<sup>2</sup> There is abundant documentary proof that the Roman officials took account of the religious peculiarities of the Jews. In addition to the data referred to on pp. 164 f. *above*, cf. also the story told by Josephus in *Antiquities* xvi. 2 3. § 27 of how the Jews of Ionia complained to Agrippa that their laws were not being regarded, and that, for instance, they were being haled before the law courts on feast days. See also p. 177, n. 2 *above*.

Jesus was handed over to him, Pilate was informed either in writing or verbally of the accusations made against the prisoner. The accusation ran: He wants to make himself king of the Jews. Therefore the question put by Pilate to the sanhedrists has a special significance. He wants to induce them to express themselves more fully concerning the charge; apparently he is expecting them to name a specific crime which the alleged pretender to the throne is supposed to have committed.<sup>3</sup>

The disappointment and irritation of the hierarchs is therefore understandable. In delivering Jesus over to the Roman court as "King of the Jews" they think they have named a charge which leaves nothing to be desired in the matter of definiteness, and which should be seized upon at once by a Roman judge. At first they avoid saying directly that their design is to have Jesus executed, though they make this apparent in that they call Him a criminal. The procurator is thinking, or at least pretending to think, of a crime which is not a capital one, and he therefore invites the Jews to judge the accused according to their own law; for of course they can judge noncapital cases independently themselves. If Pilate guessed that they had been plotting the death of Jesus, his words must naturally have had an undertone of irony;

<sup>3</sup> J. WEISS, *Das älteste Evangelium* (1903), p. 317, explains the not quite transparent passage as follows: "Man hat den Angeklagten eingeliefert—natürlich nicht ohne eine formulierte mündliche oder schriftliche Meldung: 'Dieser Mann gibt sich aus als der König der Juden.' Die Frage des Pilatus bedeutet also: 'Was ist das für eine Anklage, die ihr da erhebt? Was bedeutet sie? Was soll ich damit?'" Less probable is the theory that this was an unsuccessful attempt on the part of the Jews to get their sentence carried out without its being examined (thus, M. VON ABERLE, TQ, 53 [1871], 43-45, and U. HOLZMEISTER, ZkTh, 39 [1915], 346, n. 2). This hypothesis only deserves serious consideration in the form given it by J. LANGEN in *Die letzten Lebenstage Jesu* (1864), p. 257. On the basis of the rabbinical tradition which places the loss of capital jurisdiction of the Sanhedrin forty years before the fall of Jerusalem, this author assumes that Pilate was the first procurator of Judea to reserve the *jus gladii* to himself. At the trial of Jesus the new procedure was still somewhat strange to them, hence their defiant answer, John 18:30. But apart from the rabbinical dating, which is doubtless somewhat approximate, there is nothing to support the assumption that Pilate was the first to reserve the *jus gladii*. See Excursus VII. Neither can we agree that the Jews' answer to Pilate's opening question represents a *captatio benevolentiae* (RICCIOTTI, *op. cit.*, p. 613).

for he must have known, as the Jews did, that the latter had lost the *jus gladii*. So, in this way, the Jews are forced to put their cards on the table: they wish to execute Jesus but since they do not possess full capital jurisdiction, it is not lawful for them to do so. Now that Pilate knows the Jews are intent upon the death of Jesus, he consents to go into the case, and begins to examine the Prisoner.

According to the unanimous testimony of the four evangelists the first question which he puts to Jesus is: "Art thou the king of the Jews?"<sup>4</sup>

This question shows that the procurator had already been informed of such a charge on the part of the Jews; this, as mentioned above, must have been done when Jesus was delivered up at the *prætorium*. True, Mark and Matthew are silent about it; it is only later that they speak of the accusations of the chief priests. But that has no very deep reason; it is only a further proof of the casual and naïve nature of their story.<sup>5</sup> Luke, on the contrary, starts off his narrative of the trial with the presentation of the charges by the sanhedrists (23:2), and, in doing so, no doubt reproduces the historical facts of the case faithfully, whether he is following a special source or only making Mark's report clearer. He is doubtless right also in giving these accusations a purely political content. The other evangelists likewise imply an accusation of this nature in that they make Pilate use a politico-legal wording in his question concerning the messianic claim of Jesus. For the expression "King of the Jews" is the secularized form of "Messias," shifted into the plane of the profane and the political; or of that other messianic title, "King of Israel" (John 1:49; 12:13), which was a little more strongly tinged with political significance. The motive of the sanhedrists is obvious. The procurator would not have been interested in the purely religious crime of blasphemy; on the other hand, he could not dare to view with indifference the accusation that Jesus claimed to be king of the Jews. A

<sup>4</sup> Mark 15:2; Matt. 27:11; Luke 23:3; John 18:33.

<sup>5</sup> See BICKERMANN's remarks to this effect, *op. cit.*, pp. 198 f.

In view of the fact that the Romans were only too well aware of the Jewish people's desire for freedom and independence, the procurator would be bound to see in such a claim an attempt to overthrow the constitution, in other words, high treason. It is surely needless to demonstrate that in twisting the accusation in this way the sanhedrists were guilty of grave and deliberate deceit.<sup>6</sup> They must have known that the title, "King of the Jews," especially in the eyes of the Roman governor, meant something essentially different from the title of Messias to which Jesus had owned. For they had just branded Him as blasphemer for this very reason—that His messiasship seemed to lack the confirmation of outward proofs of power, being of an inner, nonpolitical, religious nature. Having condemned Jesus in their own trial because He did not correspond to their material, nationally-colored conception of the Messias, they now wanted to have Him condemned by the pagan court on the allegation that He made claims corresponding precisely to their nationalistic messianic ideal. However one may judge the behavior of the hierarchs in the first, internally Jewish, phase of the trial, the tactics adopted by them before the court of the Roman governor cannot, even with the best will in the world, be excused on the ground of *bona fides*.

Jesus could not answer Pilate's question with a point-blank "Yes," as there was nothing further from His mind than to claim an earthly, worldly kingdom. But neither could He deny it, since He knew Himself to be really, in a positive sense, king of the Jews by virtue of His messiasship. Therefore He answered in the affirmative, but with a reservation which indicated the special character of His own conception of kingship (Mark 15:2). If a concise, unreserved affirmative was implied in this formula,<sup>7</sup> Pi-

<sup>6</sup> Cf. esp. the arguments of H. VAN DER LOOS, *Jesus Messias-Koning* (1942), pp. 184 f.; the Jewish scholar MONTEFIORE, *op. cit.*, p. 371, admits at least that a translation into the purely political equivalent of the name of the Messias is here.

<sup>7</sup> On this point cf. E. KLOSTERMANN, *Das Markus-Evangelium* (3rd ed., 1936), p. 159. GOGUEL wrongly sees in this wording a refusal to answer. J. WEISS, *op. cit.*, p. 325 is right when he says: "Keine einfache Bejahung, aber auch keine Ablehnung." And again: "Jesus überlässt die Verantwortung für die Formulierung, die doch immer etwas Inadäquates hat, dem Richter."

late would surely have declared the examination at an end and passed sentence. As it was, however, he had to turn to the accusers for the purpose of obtaining further information.

The chief priests seized the opportunity of substantiating their charge. The evangelist, Luke, alone gives us details. According to him (23:2), the sanhedrists put forward three charges from the beginning: 1. Jesus is stirring up the populace; 2. He is forbidding the populace to pay taxes to Cæsar; 3. He is claiming to be Christ the King. When Pilate, after having examined Jesus, still remained undecided, they reverted to their first indictment: "He is stirring up the people, teaching throughout all Judea, and beginning from Galilee even to this place" (Luke 23:5). Of the three indictments, the second is an obvious lie; as the Coin of the Tribute pericope shows, Jesus definitely dissociated Himself from the nationalistic circles who were inciting people to refuse to pay tribute to Cæsar (Mark 12:13-17). The charge of stirring up the masses was also a distortion in that the religious movement brought into being by Jesus bore no political character whatsoever (cf. John 6:15).

After hearing the chief priests, Pilate challenged the accused to define His position, but to his astonishment the latter refused to express Himself concerning the charges brought against Him. "Silence was certainly not a usual failing on the part of Jewish defendants."<sup>8</sup>

After hearing the chief priests, Pilate challenged the Accused to prosecution, Pilate clearly did not believe Jesus to be guilty (Luke 23:4; cf. Mark 15:5, 9 f.). This is remarkable. True, Mark says the procurator had realized that the chief priests were actuated by envy (15:10). It might also have been that the anti-Jewish Pilate wished to show the Jewish leaders how little he thought of their evidence. Nevertheless his behavior remains puzzling. Jesus had confessed to being the Messias-King, though with a hint of a reservation; but He had refused to defend Himself against the other

<sup>8</sup> O. HOLTZMANN, *Das Neue Testament*, I (1926), 71.

accusations. This being so, it would have been difficult for the procurator to dispute the guilt of the Accused quite openly.

At this point, it is necessary to recall that the gospels only give an excerpt from the trial. Obviously, Jesus' answer to Pilate's question was fuller than the synoptics give us to understand. Pilate could not gather from the restrictive wording in which Jesus couched His admission that He meant a nonpolitical kingship. If the Roman nevertheless expressed himself finally convinced that the Accused was not guilty of high treason, he must have learned something of the special nature of the claim of Jesus to kingship. Actually, the Fourth Evangelist makes Jesus give the procurator a full explanation precisely on this point. This passage, peculiar to John alone, thereby proves itself to be authentic tradition, if not in actual words, at least in substance.<sup>9</sup> According to it, in the course of a conversation with His judge within the praetorium, Jesus described to the latter the spiritual and religious nature of His kingship (John 18:33-38). To the question whether he was king of the Jews, Jesus replied:

"Sayest thou this of thyself, or have others told thee of me?"

To this Pilate answers: "Am I a Jew? Thy own people and the chief priests have delivered thee to me. What has thou done?"

And now Jesus clarifies His claim to kingship in negative terms: "My kingdom is not of this world. If my kingdom were of this world, my followers would have fought that I might not be delivered to the Jews. But, as it is, my kingdom is not from here."

Pilate recognizes correctly that Jesus is answering with an affirmative the question posed at the beginning. "Thou art then a king?" he asks.

Jesus answers with a direct affirmative and explains His idea

<sup>9</sup> This is also emphasized by E. RENAN, *Vie de Jésus* (1883), p. 413, and CULLMANN, *op. cit.*, p. 20. J. KLAUSNER, *Die messianischen Vorstellungen des jüdischen Volkes im Zeitalter der Tannaiten* (1904), p. 2, thinks otherwise, and comments on John 18:36: "Dieser Spruch ist im Munde des jüdischen Messias undenkbar." For he regards Jesus Himself as a man completely caught up in the views of His time, to whom the "dual nature of the Messiah" must have been an unshakable conviction; cf. on the other hand, H. VAN DER LOOS, *op. cit.*, p. 187.

of kingship in positive terms: "Thou sayest it: I am a king. This is why I was born, and why I have come into the world, to bear witness to the truth. Everyone who is of the truth hears my voice." His claim to rule as king takes the form of proclaiming the divine revelation and leading God's cause to victory.<sup>10</sup>

Pilate thereupon cuts Him short with the sceptical question: "What is truth?"

Even if he cannot summon up any understanding for a kingdom of truth, he is nevertheless convinced that this Man is not a political offender. He takes Him for a harmless and at bottom pitiable enthusiast, and straightway declares to the Jews: "I [for my part] find no guilt in him" (John 18:38; Luke 23:4).

<sup>10</sup> A. WIKENHAUSER, *Das Evangelium nach Johannes* (1948), p. 268.

## 10. BEFORE HEROD ANTIPAS

HAVING CONVINCED himself that Jesus was innocent, Pilate should have freed Him immediately. He did not do so, and with this his guilt begins. To be sure, he tried to have Jesus acquitted, but always by devious ways. Obviously he considered that it would be perilous, in view of the stubborn determination shown by the sanhedrists, to offend them by curtly rejecting their indictment. He knew from experience how unpleasant Jewish fanatics could make matters, even for a man in his high position. Moreover, he must have been keenly aware that his own position was none too secure owing to the various irregularities of which he had been guilty. But in any case, he lacked the essential qualities of a good judge: staunch adherence to one's convictions, firmness and inflexibility. He was definitely not of the stamp of the Roman whose praise was sung by Horace:<sup>1</sup>

Iustum ac tenacem propositi virum  
non civium ardor prava iubentium . . .  
mente quatit solida.

He made, in all, three more or less resolute attempts to wrest from the grasp of the accusers the Victim whom they were demanding so stormily.

The assertion of the Jews that Jesus was stirring up the people "from Galilee even to this place" led him to the first attempt. At the mention of Galilee Pilate enquired whether Jesus was from there. When he heard that this was so, and realized that Jesus was therefore a subject of the tetrarch, Herod Antipas, who hap-

<sup>1</sup> *Carm.* iii. 3. *Init.*

pened to be in Jerusalem just then for the Passover,<sup>2</sup> he decided to pass the Accused on to him (Luke 23:6-12).<sup>3</sup> He was not bound to do this; on the contrary, he did it of his own accord, obviously in the hope of getting rid of an awkward case. But he was entitled to do so as Antipas, a vassal of Rome, was his equal and rival in juridical powers as a personal magistrate and at least partly so as *forum delicti commissi* too.<sup>4</sup> Besides, he would seem to have hoped that this act of diplomatic courtesy would improve his relations with Antipas, which were strained at the time. At any rate, the two potentates were friends from that day as a result of the incident.

But what did Pilate expect from Herod—an independent and conclusive termination of the trial or only an expert's opinion? Views differ. In support of the view that Pilate only wished to obtain a fellow judge's opinion from the regional sovereign of Jesus it can be pointed out that Herod would scarcely have had the right to hold a trial in a city not within his territory. If it was forbidden on principle to the Roman governors to exercise any functions of an official kind beyond the frontiers of their province,<sup>5</sup> it may be assumed that the tetrarch of Galilee was likewise precluded from passing judgment within the province of Judea. But possibly there may have been exceptions allowed to this rule, and the tetrarch of Galilee may have been allowed to sit in judgment, in his Jerusalem palace, on people from his own territory, if the procurator of Judea gave him explicit authority to do so.

<sup>2</sup> Josephus also speaks of a journey to Jerusalem made by the tetrarch on the occasion of a Jewish feast, *Antiquities* xviii. 5. 3. § 122.

<sup>3</sup> Here a literary transition seems to have occurred in Luke; in reality the personal particulars of Jesus must have been ascertained at the beginning of the proceedings (cf. Acts 23:34 and G. BERTRAM, *Die Leidensgeschichte Jesu und der Christuskult* [1922], pp. 65 f.; STEINWENTER, *op. cit.*, p. 475, n. 1). Hence it seems that in the course of the hearing Pilate reverted to the information brought him at the beginning concerning the Galilean origin of Jesus, and seized upon it as a pretext for turning over to Herod a case which was becoming embarrassing to him.

<sup>4</sup> T. MOMMSEN, *Römisches Strafrecht* (1899), pp. 114 f., 356 f.

<sup>5</sup> Dig. 1, 18, 3: ". . . dum in provincia est; nam si excesserit, privatus est." Cf. HUSBAND, *op. cit.*, p. 265.

But the most probable assumption is that Pilate counted on Herod judging Jesus after his return to his own territory. At any rate, the gospel narratives seem to favor the view that Pilate did not look to Herod merely for a fellow judge's opinion, but, on the contrary, hoped that he would dispose of the case. Obviously, the procurator wanted to get rid of the troublesome matter. In this case a colleague's opinion, whatever it might be, would have only half served him. A remark made by Pilate at the end of the episode is conclusive. When Jesus is brought before him once more, he declares that Herod has found no guilt in the Accused, for he has sent Him back (Luke 23:15).<sup>6</sup> Hence, Pilate concludes that the fact that Herod sends Him back means that he too considered Him innocent. Now, Pilate could not have argued in this way if he had only expected an opinion from the tetrarch; for in that case, Jesus would definitely have had to be sent back. Therefore the procurator thinks: If Herod had believed Jesus guilty he would not have sent Him back; he would have kept Him and tried Him—now or later.

Consequently, if Pilate hoped that Herod would avail of his right of jurisdiction and take over the trial of Jesus, the further question arises: What verdict did the Roman expect Herod to pass? It would seem that he reckoned on an acquittal. The accusations had failed to convince him, Pilate, and it was not likely that more convincing arguments would be produced before Herod. Besides, the procurator probably assumed that the tetrarch would have taken measures long ago against Jesus if the latter were really a dangerous agitator, as the indictment tried to make Him. Since he had left Him alone so far, it was not to be expected that he would condemn Him now.

Contrariwise, the view that Pilate had reckoned on Herod condemning Jesus is confronted by a difficulty which is of considerable weight. How imprudent it would have been on the part of the Roman to have let out of his hands a case which concerned an

<sup>6</sup> The wording of the Alexandrian text, doubtless the oldest one, ran thus; cf. E. KLOSTERMANN, *Das Lukás-Evangelium* (2nd ed., 1929), p. 224.

alleged rebel against the Roman emperor if it seemed probable to him that a verdict of guilty would have been passed by the other side!

Jesus was conducted from the former palace of Herod by a squad of guards and some members of the Sanhedrin, into the Hasmonean Palace which was situated nearby, across the Tyropœan Bridge, to the west of the Temple, where Herod Antipas lived when staying in Jerusalem.<sup>7</sup> Antipas, the youngest and cleverest son of Herod the Great, had been reigning over Galilee and Perea since the death of his father in 4 B.C. He owed his evil reputation mainly to his action against John the Baptist. The latter had publicly criticized the tetrarch for having put away his lawful wife, an Arabian princess, and entered into an illegal marriage with his sister-in-law and niece, Herodias. John had been imprisoned in the fortress of Machærus and beheaded on the occasion of a court festival at the instigation of Herodias. Antipas had never taken any serious measures against Jesus whose activities, at least in the early period of His public ministry, were mainly centered around Lake Genesareth, that is to say, on Galilean soil. True, when the first news of the teachings and miracles of Jesus had reached him, Herod had hinted ironically that he regarded the activities of Jesus in the same light as those of the Baptist, whom he had put to death (Mark 6:16),<sup>8</sup> but he had not shown any interest in Jesus after that. Jesus seems to have avoided appearing in public in Tiberias, the town in which Antipas lived. True, He had once uttered a warning against the tetrarch, but this was within the inner circle of His disciples (Mark 8:15).<sup>9</sup> Only toward the end of the Galilean period of the ministry of Jesus did Antipas, apparently at the instigation of the Pharisees, try to intimidate the popular preacher and induce Him to leave the country. But Jesus had seen through his preconcerted game and had sent word to the "fox" in Tiberias that He would leave

<sup>7</sup> *Jewish War* ii. 16. 3. § 344; *Antiquities* xx. 8. 11. § 189 f.

<sup>8</sup> Cf. J. BLINZLER, *Herodes Antipas und Jesus Christus* (1947), pp. 6-12.

<sup>9</sup> BLINZLER, *op. cit.*, pp. 12-16.

the country when God ordained that He should, but that he would first go on with His work (Luke 13:31-33).<sup>10</sup>

Now ruler and subject stand face to face for the first and last time; the one, a man of the world on the threshold of old age—for remember, he was already regent when Jesus was still a boy—indifferent in the matter of religion at least since the time of his upbringing in the pagan capital of the world; a lover of magnificent buildings, luxurious food, and every other pleasure of life; a cunning diplomat but one whose cleverness apparently left him in the lurch when sensual passion overcame him; the other, the son of a manual laborer from the little village of Nazareth, young and earnest, but apparently uneducated and unsophisticated, an ordinary subject like any other, who would not have attracted any particular attention if it were not for the strange tales told of His doings. And it is entirely in the character of the frivolous prince that he is interested in Jesus primarily as a wonderworker and seems to forget completely why He has been brought before him. He importunes Him with a flood of words in an effort to learn more about His mysterious powers and if possible even to witness a miracle. He places Jesus on a level with the mountebanks and jugglers who used to amuse the court in those days. So we must picture the prince, not as a sinister inquisitor, but rather as a capricious, jovial and affable person. But his good humor is dissipated very quickly. His flood of words falls on heedless ears. Doubtless he has taken it for granted that this Prisoner, who was in such a serious predicament, would immediately do his will if only to win his favors. But Jesus remained calm and silent; here too His silence was the exalted, sublime silence of the suffering servant of God (Isai. 53:7).

Only now did the tetrarch remember the legal business to be transacted. He allowed the chief priests and scribes who were present to make their indictments. This they did freely and no doubt on the lines familiar to us from the trial before Pilate. But though Antipas was probably out of humor now, nothing they

<sup>10</sup> BLINZLER, *op. cit.*, pp. 16-20.

said made the least impression on him. There was only one point of the indictment which he found worth commenting on. That was Jesus' claim to kingship. What the sinister and suspicious old Herod could not have done, his lively, clever and somewhat ironical son did now: he made an amusing joke of that claim to kingship. When the evangelist tells us that Herod and his soldiers<sup>11</sup> treated Jesus with contempt and mockery, one can well imagine that the tetrarch did this by giving the signal for general laughter with some mocking or scornful words. It is very probable that he compared his own position with that claimed by Jesus and cried, in mock astonishment: So you're a king, are you? Well, you have gotten farther than I have (we must remember that Herod aspired to the title of king all his life, but never attained it). And the swarm of fawning courtiers was naturally only too ready to supply the required echo to a witticism from that exalted mouth. At any rate, the scene ends with a caricaturing of Jesus as king: Herod has a bright robe<sup>12</sup> draped round His shoulders and sends Him back to Pilate decked out as a mock king. In sending Him back he indicated that he refused to take over the case; while by dressing Him up in garments of mockery he gave Pilate to understand that he regarded Jesus as ridiculous rather than dangerous.

The behavior of the tetrarch in the trial of Jesus has been

<sup>11</sup> "Herod, with his soldiery," doubtless means Herod *and* his soldiers, see BAUER's German-Greek NT Dictionary, p. 1301. The interpretation "supported by," or "trusting to," is less likely. Thus, A. W. VERRAL, "Christ before Herod," JThSt, 10 (1909), 322-355 and F. C. BURKITT, *Gospel History and its Transmission* (5th ed., 1925), p. 138. In that case the meaning would be: Herod, with his military forces behind him, considered Jesus, the alleged revolutionary, to be harmless.

<sup>12</sup> Whether the robe was white (as Père JOÜON, who sees in it a symbol of innocence, believes, RSR, 26 [1936], 80-85), or red (as held by K. KASTNER, who maintains in *Jesus vor Pilatus* [1912], p. 75, that the garment is identical with the purple garment of Mark 15:17), cannot be decided. Luke 23:11 speaks only of a "bright" or "radiant" robe. In any case the garment in question is symbolical of kingship. Cf. H. RIESENFELD, *Jésus transfiguré* (1947), pp. 267, n. 5, and 122, n. 37. The interpretation of J. CANTINAT, "Jésus devant Pilate," *La Vie Spirituelle*, 86 (1952), 237: "Signifiant ainsi qu'il le tient un *illuminé*, dont l'ordre public n'a rien à craindre," is highly improbable. Two still more improbable interpretations are to be found in DANIEL-ROPS, *op. cit.*, p. 512.

viewed in quite different ways by various scholars. The American scholar, Victor E. Harlow, has developed the following views in a massive work:<sup>13</sup> Herod Antipas had been intending for a long time past to eliminate Jesus as a troublesome agitator (Luke 13:31), but he had been unable to do so because Jesus had left Galilee in time. In Jerusalem, to his great joy<sup>14</sup> he had succeeded at last in getting hold of the wanted Man. He subjected Him to a stern examination<sup>15</sup> and declared Him to be a criminal worthy of death,<sup>16</sup> but as the tetrarch was outside his domain, he could not undertake the execution of the sentence. Therefore, he sent Jesus back to the Roman procurator, at the same time letting Pilate know in writing and also symbolically by dressing Jesus up in a kingly robe, that the Accused was a usurper worthy of punishment. When continuing the trial, so Harlow writes, Pilate refers to this death sentence: "I upon examining him in your presence have found no guilt in this man as touching those things of which you accuse him. But not so Herod.<sup>17</sup> For he has sent him back to us" (Luke 23:14 f.). This sentence, beginning with "for," has been rewritten by Harlow to mean: If Herod had believed Him innocent he would have taken Him under his protec-

<sup>13</sup> *The Destroyer of Jesus—The Story of Herod Antipas, Tetrarch of Galilee* (1954), pp. 172-179, 229-242.

<sup>14</sup> Luke 23:8. In reality the reason for Herod's joy here is that he can see Jesus and hopes He will work a wonder.

<sup>15</sup> This is HARLOW's reading, *op. cit.*, pp. 233 f., of the expression *ικανοῖς λόγοις* Luke 23:9; but the adjective definitely does not mean "strong, powerful, vigorous, violent," but on the contrary, as its use in v. 7 shows, simply "many."

<sup>16</sup> HARLOW gives this meaning, *op. cit.*, pp. 233 f., to the word *ἐξουθενήσας* Luke 23:11, "That word expressing the most intense contempt and valuation at less than nothing whatever, is undoubtedly an expression of the intent of Herod to destroy Him, if not a paraphrase of a formal judgment or conviction" (p. 234). But here a great deal too much is read into the word, cf. Luke 18:9.

<sup>17</sup> *Op. cit.*, pp. 236 f.: In Luke 23:15 ἀλλ' οὐ δὲ Ἡρώδης (but not Herod) should be read instead of ἀλλ' οὐδὲ Ἡρώδης (but also not Herod), he maintains. Such a duplication of the adversative particle would be most singular, however. The assertion that the "but" is illogical otherwise (*op. cit.*, p. 237), is a mistaken one. The meaning is: I have found no guilt in this person; you will perhaps retort that I have not been sufficiently informed concerning his seditious activities in Galilee; but Herod too, who must surely have the most exact information of it, has found nothing of the kind, as he proves by sending Jesus back to me, all of which proves that "nothing deserving of death has been committed by Him" (Luke 23:15).

tion instead of delivering Him up to the people of Jerusalem, who are so hostile to Him, by sending Him back to me. Pilate, who did not share the ideas of Herod, first tried, by the scourging, to half carry out the verdict of the Galilean prince, but was then forced, by the stubbornness of the populace, to let Herod's sentence take its course. By washing his hands before the people, however, he expressed the assertion that it was not he who was responsible for the outcome. Hence, Harlow maintains, though Pilate cannot be absolved of all guilt, Herod must be regarded as the person really responsible for the death of Jesus. He was the destroyer of Jesus. Harlow finds his views confirmed in ancient writings, which place Herod and Pilate side by side in the matter of the responsibility for the crucifixion of Jesus.<sup>18</sup> There can be no doubt, however, but that this interpretation does not correspond with the gospel text.

The same applies to Bornhäuser's theory that after the mocking of Jesus, Herod *himself* had laid his magnificent robe over the shoulders of the Accused and *accompanied* Him back to Pilate; that the tetrarch was consequently a witness of the last phase of the trial, and as he did not protest against the final decision of the procurator, he shared his guilt and responsibility for the death of Christ on the cross.<sup>19</sup> In this interpretation a new meaning, which they definitely do not have in this context, is read into two of the verbs in Luke 23:11.<sup>20</sup> And when Bornhäuser, contesting

<sup>18</sup> HARLOW, *op. cit.*, p. 179, n. 26, refers to Acts 4:27 (with reference to which see p. 282 below); Ignatius, *Smyrn.* i. 2; Gospel of Peter 1:1-2:5; Eusebius *Historia Ecclesiastica* ii. 4. 1. He could also have referred to the Syrian *Didascalia*, which contains the assertion, in chapter 21: "Herod gave orders that he should be crucified." But none of these texts justified HARLOW's misinterpretation of the text of Luke. Further aspects of this question have been dealt with by J. BLINZLER, "Herodes und der Tod Jesu," *Klerusblatt*, 37 (1957), 118-121.

<sup>19</sup> K. BORNHÄUSER, "Die Beteiligung des Herodes am Prozesse Jesu," *Neue kirchliche Zeitschrift*, 40 (1929), 714-718. P. GAECHTER, *ZkTh*, 78 (1956), also approves this interpretation, which he calls "thoroughly possible philologically"; but cf. next note.

<sup>20</sup> *περιβαλὼν* cannot mean "after he had put on (a bright garment)," as the verb in the active form is *only* used in the transitive sense in the New Testament. And as the use of the verb in v. 7 and 15 proves, *ἀπέπεμψεν* undoubtedly means "he sent back," not "he accompanied back."

the usual interpretation, asks: "What became, then, of the bright robe which is supposed to have been put on Jesus?"<sup>21</sup> one feels tempted to ask him a counter-question: "What became of Herod, who you say was present at the trial of Jesus to the end?" Not by a single syllable does Luke, not to mention the other evangelists, indicate the presence of the tetrarch at the final proceedings before the Roman tribunal. Consequently, we must adhere firmly to the following: Herod neither declared Jesus guilty nor condemned Him; on the contrary, by sending the Accused back in the royal garment of mockery, he let the procurator know that he did not take the case seriously and therefore did not wish to pursue it further.

Pilate can not have been particularly pleased by the refusal of his invitation, but if the strained relations between himself and Herod were nevertheless remedied precisely by this incident, then Pilate must have been the party particularly anxious for reconciliation. There are clues which confirm this supposition. It would seem, to all appearances, that the enmity had its origin in Herod's participation in the opposition to Pilate over the latter's setting up of votive tablets in Herod's former palace in Jerusalem. However much Pilate may have resented Herod's part in the matter, he had to do all he could to eliminate the bad feelings; for it is a historical fact that Antipas was *persona gratissima* with Emperor Tiberius.<sup>22</sup> We know that some years later—in the year 36 A.D. Tiberius obtained from the tetrarch private reports on the dealings of Vitellius, governor of Syria, with the Parthians.<sup>23</sup> It has even been suggested that similar reports to Tiberius concerning the doings of Pilate may have been the cause of the enmity between Antipas and Pilate, but all proofs are lacking. The massacre of some Galileans by Pilate's soldiery, who invaded the Temple (Luke 13:1 f.), an incident which had taken place exactly a year previously, may also have been the cause of the tetrarch's hostility.

<sup>21</sup> *Op. cit.*, p. 717.

<sup>22</sup> *Antiquities* xviii. 2. 3. § 36.

<sup>23</sup> *Antiquities* xviii. 4. 5. § 104 f.; cf. xviii. 5. 1. § 115.

The Herod episode is reported only by Luke, but the slightness of documentation does not justify our doubting the historicity of the incident. The matter peculiar to the Third Evangelist includes a whole series of incidents of absolutely unimpeachable historicity. One seeks in vain for any apologetic or anti-Jewish bias in the Herod pericope. The assertion that in it Luke wished to shift the blame from Pilate to Herod, that is to say, to the Jewish side, is a crude misconstruction of the real facts of the case. "In any case, Luke's Herod is still completely free of responsibility for the death of Jesus."<sup>24</sup> It is equally impossible to explain the pericope as a legend made to link up with Ps. 2:1-2,<sup>25</sup> for if the words of the psalm had been the model, the tetrarch would have been given a far more active role than he gets in Luke.<sup>26</sup> Those who consider it improbable that the evangelist could have obtained knowledge of what had gone on in the Jerusalem palace of the tetrarch should remember that more than one person among the early Christians had close ties with the court of the ruler of Galilee. For instance, among the Galilean women disciples was a cer-

<sup>24</sup> W. BAUER, *Leben Jesu im Zeitalter der ntl. Apokryphen* (1909), p. 194.

<sup>25</sup> Martin DIBELIUS tries to do this in "Herodes und Pilatus," ZNW, 16 (1915), 113-126; similarly BERTRAM, *op. cit.*, p. 65, and many others. That the account of the proceedings before Herod represents a short version of the trial before Pilate, as J. FINEGAN thinks it does, *Überlieferung der Leidens- und Auferstehungsgeschichte Jesu* (1934), p. 28, is an utterly impossible theory.

<sup>26</sup> At any rate, it is a gross exaggeration to assert that the episode is "flagrantly improbable" (GOGUEL, *op. cit.*, pp. 379-433). BICKERMANN, *op. cit.*, p. 205, aptly remarks: "Il nous est difficile d'admettre que l'auteur du troisième Évangile, qui corrige ses sources d'information quand leurs données sont susceptibles d'étonner le lecteur, que ce Grec cultivé, ait proposé à 'S. Exc. Théophile' une scène, qui serait d'une criante invraisemblance." And it is precisely the doubts connected with the legal-historical aspect that GOGUEL puts in the forefront which are, as BICKERMANN demonstrates, *op. cit.*, p. 379, more far-fetched than reasonable and justified. Cf. also C. F. LEHMANN-HAUPT, *Israel. Seine Entwicklung im Rahmen der Weltgeschichte* (1911), p. 229: "Wenn Lukas 23: 7-12 mitgeteilt wird, dass Pilatus als Landpfleger von Judäa dem zum Paschafest in Jerusalem anwesenden Herodes Antipas die Entscheidung hinsichtlich des über Jesus gefällten Urteils habe überlassen wollen, so wird damit nur bekundet, was man staatsrechtlich von vornherein notwendig erwarten musste, und diese Nachricht muss daher unseres Erachtens, bis zum vollen Erweis des Gegenteils, als glaubwürdig gelten"; C. SCHNEIDER, *Geistesgeschichte des antiken Christentums*, I (1954), 71: "Dass der römische Statthalter den galiläischen Landesherrn Herodes Antipas heranzog, ist wahrscheinlich."

tain Joanna whose husband, one Chuza, was one of the officials of Herod Antipas (Luke 8:3). And a foster-brother of Herod the tetrarch was a prominent member of the Christian community of Antioch, which was very familiar indeed to Luke, who probably came from that town (Acts 13:1). And when one considers, finally, that the evangelist dedicated his work to a certain prominent person who must, *ipso facto*, have been well informed in court matters, one can understand why Luke, in contrast to the other evangelists, inserts the Herod episode into his passion narrative, although this incident was devoid of significance for the result of the trial.

## II. BARABBAS

WHEN PILATE resumed proceedings after Jesus had been brought back to him, he was more disinclined than ever to believe the Accused guilty, or to give way to the pressure of the Jewish accusers (cf. Luke 23:13-15). But instead of resolutely deciding upon acquittal now, he tried once more to gain his end by devious means.

According to the gospels, the Jews had the right to demand the release of a prisoner at the Feast of Passover (Mark 15:6; John 18:39). The origin and the legal aspect of this amnesty are explained in the following Excursus. Doerr and Husband maintain that it could only be a matter of the right of a judge of the criminal court to drop proceedings against a criminal.<sup>1</sup> The fact that the Roman jurists of the third century A.D. credited only the emperor and the senate,<sup>2</sup> but not the Roman governors, with the right to reprieve, causes Schürer to conclude that the amnesty right of the procurator must have rested upon a special authority from the emperor.<sup>3</sup> Johannes Merkel,<sup>4</sup> on the other hand, repre-

<sup>1</sup> DOERR, *op. cit.*, p. 58; HUSBAND, *op. cit.*, pp. 270 f., and following him H. VAN DER LOOS, *Jezus Messias-Koning* (1942), p. 190. Cf. T. MOMMSEN, *Römisches Strafrecht* (1899), pp. 453 ff., and *Codex* 9, 42, 2.

<sup>2</sup> *Dig.* 48, 19, 31 pr.: "Ad bestias damnatos favore populi Præses dimittere non debet, sed si eius roboris vel artificii sint, ut digne populo Romano exhiberi possint, Principem consulere debet." To this STEINWENTER, *op. cit.*, p. 481, n. 4, remarks: "Die 'dimissio favore populi,' die Modestinus hier für unzulässig erklärt, betrifft nur solche, die mit unwiderruflicher Sentenz verurteilt waren; in jedem Fall zeigt diese Stelle, dass solche dimissiones vorgekommen sind." Concerning reprieve by the senate, cf. *Dig.* 48, 3, 2, 1.

<sup>3</sup> SCHÜRER, I, 469; H. REGNAULT, *Une province procuratorienne au début de l'empire romain* (1909), p. 133. Cf. Pliny the Younger *Ep.* x. 40. 41.: "Erant tamen qui dicerent, deprecantes iussu proconsulum legatorumve dimissos." In any case, here the governors acted by virtue of authority delegated to them by the

sents the view that the legal situation in the third century is the result of a development due to the growth of the power of the emperor, and that in the time of Jesus the governor of Judea still possessed full power over inhabitants of the province liable to the death penalty, and could execute or reprieve them as he pleased. The historicity of this custom reported in the gospels has been very often disputed, mainly on the ground that the Jewish historian Josephus gives no report of such a custom. Even as recently as 1949 Pierre van Paassen declared that this custom had never existed except in the imagination of the evangelists: otherwise it is a sheer miracle that no document, report, or historian of antiquity ever referred to it.<sup>5</sup> Conservative exegesis has tried, by reference to certain parallels known in law, to show that the custom was at least possible. The Roman custom of removing their fetters from criminals and setting them free on lectisternal feasts is the one most frequently put forward in this connection, though to be sure (if Livy is to be so understood), this was a mass amnesty, whereas here it is a question of freeing one individual.<sup>6</sup> But

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emperor. BESNIER explains the Barabbas amnesty in the same way, *op. cit.*, pp. 203 f. For him the incident is a proof that no real Jewish trial can have taken place. Otherwise, he maintains, Pilate's invitation to choose between Jesus and Barabbas would have been "juristically nonsensical and politically an error." The first-named surmise would be correct only if Pilate had been bound to adhere to the judgment of the Sanhedrin, which undoubtedly was not the case, and the "political error," which moreover, could only have been committed if the Sanhedrin had only carried through a preliminary examination, is not of the kind that could not be credited to anti-Jewish Pilate.

<sup>4</sup> ZNW, 6 (1905), 303. Compare the release of prisoners (against payment, it is true) by Albinus: *Antiquities* xx. 9. 5. § 215, and John 19:10: "Dost thou not know that I have power to crucify thee, and that I have power to release thee?"

<sup>5</sup> P. VAN PAASSEN, *op. cit.*, p. 171. Other examples of the same view are to be found in Ch. GUIGNEBERT, *Jésus* (1947), pp. 573-575; J. ISAAC, *Jésus et Israël* (1948), p. 485; *Le Monde Juif*, 6 (1951), 26, and BRANDON, *op. cit.*, 193 f. For BICKERMANN, *op. cit.*, p. 197, the amnesty episode is the only part of Mark's narrative which cannot be made to fit in with the present state of our knowledge of the history of law. GOGUEL, *op. cit.*, p. 382, calls the account "extrêmement douteux."

<sup>6</sup> Livy 5. 13. 8. S. LANGDON, "The Release of the Prisoner at the Passover," *ExpT*, 29 (1918), 328-330, points to a parallel in the Assyrian-Babylonian calendar tablets, according to which the king released a prisoner on the sixth, sixteenth and twenty-sixth day of the eighth month.

a parallel has also been found in Roman law, namely, the custom of pardoning and acquitting individual prisoners in response to the shouts of the populace. This custom is very well illustrated in a papyrus dating from the year 85 A.D. containing the protocol of a trial before G. Septimius Vegetus, governor of Egypt, which was first published in 1906. According to this document, Vegetus said to the accused, Phibion, who had locked up his alleged creditor and the latter's womenfolk: "You deserve to be scourged for having imprisoned, on your own responsibility, a decent man and his women, but I will deal more humanely with you, and will give you up to the populace."<sup>7</sup> Apart from the fact that there is no indication here of a regular amnesty on a feast, the case is quite analogous with the biblical one: The governor released a criminal at the wish of the populace; the words: "I will give you up to the crowd," show that the governor will release the man if the people beg him. If this example at least demonstrates how probable the custom reported in the gospels is, a passage in the Mishna tractate *Pesachim*, scarcely noticed up till now, provides a proof that the custom of releasing one prisoner or several at the Feast of Passover must actually have existed in Jerusalem.<sup>8</sup>

Two forms of amnesty existed in Roman law, the *abolitio*, that is to say, the acquittal of a prisoner not yet condemned,<sup>9</sup> and the *indulgentia*, or pardoning of one already condemned.<sup>10</sup> What

<sup>7</sup> *Pap. Flor.* 61, 59 ff. Facsimile in A. DEISSMANN, *Licht vom Osten* (4th ed., 1923), p. 230. L. WENGER, *Misc. G. Mercati*, V (1946), 575 f., who does not cast any doubt on the historicity of the Barabbas episode, contents himself with referring to this papyrus. STEINWENTER, *op. cit.*, p. 481, n. 5, recalls, moreover, that the proconsul of the Asia province, in an edict (apparently of the year 441) justified the release of a prisoner on the ground that the inhabitants of Ephesus had demanded it with shouts (H. GRÉGOIRE, *Recueil des inscriptions grecques chrétiennes*, I, p. 52, n. 100, 8); according to him the custom persisted even after Diocletian (*Cod.* 9, 47, 12!) of forcing the release of prisoners by means of acclamation. Cf. also M. DIBELIUS, *Jesus* (1939), p. 116: "Es liegt kein Grund vor, die Szene zu bezweifeln; die Annahme einer Erfindung würde den allerersten Berichterstattem einen Gestaltungswillen und eine poetische Kraft zutrauen, wie sie sonst nicht zu bemerken ist."

<sup>8</sup> See Excursus X.

<sup>9</sup> Cf. *Codex* 9, 42: De abolitionibus. *Dig.* 48, 16: Ad senatusconsultum Turpilianum et de abolitionibus criminum.

<sup>10</sup> *Codex* 9, 43, 3: Indulgentia . . . poenae gratiam facit.

Pilate intended in the case of Jesus and finally granted to Barabbas, was obviously the first form; for at that stage of the proceedings Jesus had not yet been condemned by the Roman court;<sup>11</sup> and the same would seem to apply to Barabbas, who is called merely a prisoner, not a condemned man.<sup>12</sup> It is doubtful whether the juridical character of the amnesty intended for Jesus by Pilate, when he made his suggestion, was defined precisely. Perhaps he left this question deliberately open. What was an *abolitio* in Pilate's eyes would probably be regarded by the Jews as an *indulgentia*, that is to say, as an indirect recognition of the sentence they had passed on Jesus. Hence, the procurator's hope to achieve his purpose by this means would be particularly understandable.

While Pilate was haranguing with the hierarchs once more, a crowd which came from the lower town gathered in front of the prætorium with the purpose of availing of the customary right of petition. Thereupon the trial before Pilate entered a new stage. The sanhedrists, the Roman judge and the Accused were the actors in the drama hitherto, but now the influence of the crowd made itself felt more and more. At first the emergence of the crowd seems to the procurator by no means inopportune. He saw it as a new opportunity of saving Jesus and forthwith set about guiding the amnesty negotiations into the channel where he wished them to go, by offering to release Jesus to them as an act of grace. This he did pointing to Jesus, half ironically, indicating to the people the advantageous choice before them, and calling Jesus their king: "Do you wish that I release to you the king of the Jews?" (Mark 15:9). He could not have failed to perceive that

<sup>11</sup> Albert SCHWEITZER, *Geschichte der Leben-Jesu-Forschung* (5th ed., 1933), p. 443, reckons that Pilate meant to condemn Jesus and then release Him immediately.

<sup>12</sup> Mark 15:7; Matt. 27:16; Luke 23:19,25.—R. W. HUSBAND, "The Pardoning of Prisoners by Pilate," *AJT*, 21 (1917), 110-116, asserts that the retraction of a sentence was not permissible and for this reason he concludes that Barabbas had not yet been condemned. ROSADI, *op. cit.*, p. 202, sees the release of Barabbas as being more probably a case of *abolitio privata*; MANASSERO, *op. cit.*, p. 192, on the other hand, who regards the problem as an insoluble one, nevertheless disagrees with those who contest the historicity of the Barabbas episode.

the insistence of the priests on the execution of Jesus was definitely not due to a suddenly awakened loyalty to the Roman state but, rather, to selfishness and envy (Mark 15:10). Therefore, he probably hoped that the populace, who must be strangers to such motives, would fall in with his suggestion. Nevertheless, his action was a fatal mistake. In the first place, Pilate did not consider that the populace, who were naturally anti-Roman in sentiment, would never take sides with him if they had to choose between a solution presented to them by him and one presented by the Sanhedrin. Moreover, he had not weighed the possibility that the crowds, when they appeared before him, had already agreed upon a candidate. Mark's account is vague here. Perhaps, however, it is to be interpreted as meaning that the crowd had set their hearts from the outset on having Barabbas released to them.<sup>13</sup> Pilate's action in presenting Jesus on his own inspiration as a candidate for amnesty instead of first listening to the people, was extraordinarily unwise. Many commentators assume that the Roman was the victim of a misunderstanding, and this hypothesis is not quite groundless. It is based on the fact that in the Cæsarean text of Matthew (27:16 f.), Barabbas is called "Jesus Barabbas," a reading which is regarded as authentic by some distinguished scholars.<sup>14</sup> Now, if the full name of that prisoner really was Jesus Barabbas, then it may well have been that Pilate's action was due to his mis-

<sup>13</sup> Similarly Ed. MEYER, I, 195. Another view is that of M.-J. LAGRANGE, *L'Évangile selon S. Matthieu* (1927), p. 519: The crowd had wanted to obtain the release of Jesus, otherwise their emergence at such an early hour would be difficult to explain. But if they were disciples of Jesus one would have expected that they would have attended Pilate's trial of Jesus *from the beginning*. On the other hand, the relatively early arrival of the supporters of Barabbas cannot be said to be remarkable, for they knew of course that Roman trials began early in the morning.

<sup>14</sup> Cf. E. KLOSTERMANN, *Das Matthäus-Evangelium* (3rd ed., 1938), p. 220; GOGUEL, *op. cit.*, p. 382, n. 4; and particularly H. A. RIGG, JR., *JBL*, 64 (1945), 417-456, esp. 428-432. The latter certainly forsakes the firm ground of sound criticism when he sees in "Jesus Barabbas" = "Son of the Father" only another name for Jesus Christ. Cf. p. 435: "I suggest that there never was a separate person named Barabbas at the trial. I suggest that Jesus, specifically at the time of the trial, was brought before Pilate as Jesus Barabbas and then as Jesus Christ and that this was so because of a question of jurisdictional competence on Pilate's part."

taking the shouts of the crowd for the amnesty of Jesus (Barabbas) as a demonstration in favor of the Jesus of Nazareth who was standing before them.<sup>15</sup> We cannot be certain however. At any rate, Pilate's mixing up of the case of Jesus with the amnesty demonstration of the crowd proved the beginning of a fatal turn of events. The chief priests' immediate response to the procurator's renewed effort to find a way out was a vigorous drive to stir up the mob against the Nazarene and in favor of Barabbas.

In the course of a revolt Barabbas had murdered someone and been arrested by the Romans together with his accomplices. We know nothing more about this revolt, which is mentioned by Mark as if it was a well-known happening. Many scholars connect the incident with Luke 13:1, and make this event, in turn, identical with the conflict reported by Josephus,<sup>16</sup> in connection with the Temple treasure affair.<sup>17</sup> But all these links are completely unsupported conjectures. It is certain, however, that the "robber" (John 18:40) (= rebel) Barabbas was a popular figure despite his crime, a kind of nationalist hero—and "the populace does not demand a very high moral standard of its heroes" (Josef Schmid).<sup>18</sup> Otherwise the cunning sanhedrists would not have played him off against Jesus. Barabbas cannot have been a false Messiah, however; for otherwise the procurator would never have called Jesus simply "the king of the Jews" when commending Him to the people.

Thanks to their consciously pursued mobilization of the masses,

<sup>15</sup> A supposition expressed by A. E. J. RAWLINSON, *St. Mark* (1925), pp. 227 f.

<sup>16</sup> *Antiquities* xviii. 3. 2. § 6-62.

<sup>17</sup> J. BELSER, *op. cit.*, p. 370; J. PICKL, *Messiaskönig Jesus* (1935), pp. 44-50; BUCHHEIT, *op. cit.*, pp. 93 f.; ROBERT EISLER, II, 461 f., and BRANDON, *op. cit.*, pp. 103 f., think that a revolt took place at the time of the entry of Jesus into Jerusalem and the cleansing of the Temple, a hypothesis which likewise has no authority in the gospels to back it. But cf. also J. S. KENNARD, *Politique et Religion chez les Juifs au temps de Jésus et dans l'église primitive* (1927), pp. 60-62. One must remember that relatively slight revolts and bloody clashes were of constant occurrence in those days, see *Antiquities* xviii. 1. 1. § 4-10 and ED. MEYER, I, 195, n. 1. Whether the two malefactors who were crucified with Jesus were comrades of Barabbas must remain undecided.

<sup>18</sup> *Das Evangelium nach Markus* (2nd ed., 1954), p. 291.

the sanhedrists succeeded in their purpose. The people decided against Jesus and demanded of Pilate that he should release Barabbas to them (Matt. 27:21; Luke 23:18; John 18:40; cf. Mark 15:11). A fateful decision! Up till now it was only the sanhedrists who had been seeking the death of Jesus. Now His fate was placed for a time in the hands of the masses. They let Him down and in so doing placed themselves voluntarily, though not without being influenced to do so, on the side of His deadly enemies. Only now did the circle of those guilty of the death of Jesus widen from the small circle of the leaders of the people to a great part of the inhabitants of Jerusalem. We can understand why it was that this decisive phase in the trial of Jesus remained for so long a painful memory among Christians. Later Peter reproached the inhabitants of Jerusalem in bitter words for their tragic choice (Acts 3:13 f.).

The people's sudden change of heart is often regarded as a psychological problem.<sup>19</sup> How was it that the people who had acclaimed Jesus joyfully as the Messiah only the Sunday before suddenly became His declared enemies during the trial? The activities of the Sanhedrin and the popularity of Barabbas explain much, but surely not all. The people could have pleaded for the release of Barabbas and apart from that remained uninterested in Jesus, for the watchword "Give us Barabbas!" does not, after all, mean "Crucify Jesus!" How did they come to make their own the sanhedrists' demand for His death? Some maintain that the hosannah shouters of Palm Sunday and the "Crucify Him!" shouters of Good Friday were different people and groups of people; that the first-named were mainly pilgrims from Galilee, and the latter a city rabble indifferent to religion. The distinction is probably, broadly speaking, correct; but as the pilgrims from Galilee must of course have lodged in the city in the days immediately preceding the principal days of the feast and are not likely to have absented themselves as a body from the trial of their celebrated

<sup>19</sup> Cf., finally, H. VAN DER LOOS, *op. cit.*, pp. 191 f., who (like J. PICKL, *op. cit.*, pp. 111 f.) believes that the people were political associates of Barabbas.

countryman, the question still remains: why do we not hear of even one single group of the people taking sides with Jesus? Were His former disciples disillusioned because He had not realized their nationalistically-colored messianic dreams in the end? That may have been partly the reason; yet it is hardly credible that such disappointment could have changed their former enthusiasm all of a sudden into mortal enmity. The radical cooling off of the people, which happened overnight, obviously was mainly due to the fact that Jesus had been condemned by the native court. Reverence for the holy, God-given Law was something too deeply anchored in the hearts of the people to permit them to give their sympathy to a man condemned by that Law through its legitimate guardians and interpreters. Hence it was an easy matter for the sanhedrists to win the populace for their pitiless slogan.

The rejection of his suggestion seems to have not only surprised but thoroughly upset the procurator. At least, his subsequent behavior seems to have lost the last remnant of magisterial dignity and strength. Seeing that the populace would not bargain away Barabbas under any circumstances, he realized that there was only one course open to him: to let them have their way, and when they had borne away their hero, continue the trial of Jesus and conclude it as he thought fit. But instead of decently separating the two legal questions, he continued to try to negotiate with the crowd over Jesus.

And so, after releasing Barabbas to them, he consulted the will of the crowd with the lame and helpless question: "What then do you want me to do to the king of the Jews?" (Mark 15:12). Apparently he hoped that the crowd would not press for the death of Jesus as the ruling castes were doing but would be content with some milder punishment. He was mistaken. His ill-considered question was promptly answered with a shrill yell: "Crucify him!" (Mark 15:13).<sup>20</sup> What both leaders and crowd

<sup>20</sup> The shouts of the crowd (Mark 15:13 f.) are often interpreted these days as genuine acclamations, for instance by Th. KLAUSER, "Akklamation," RAC, (1950), 218; A. BAUMSTARK, *ibid.*; STEINWENTER, *op. cit.*, p. 481 n. 6, and

demanding was death—and not merely death, but the most cruel and shameful of deaths—the Roman death of the cross. Jesus is to be declared guilty of high treason and punished with the full rigor of the law against high treason as decreed by the Emperor Augustus, the *lex Iulia maiestatis*.<sup>21</sup>

Apparently the claim of Jesus to kingship was the main fact upon which the conviction for high treason was based. Of the many crimes which are listed in Justinian's *Digestes* as constituting the *crimen læsæ maiestatis*, there is none which corresponds exactly with the crime with which Jesus was charged. But the following three definitions are an example of how easily a crime of lese majesty could be concocted out of a claim to kingship: broadly speaking, anyone who did anything aimed against the Roman people and their safety was regarded as infringing the law,<sup>22</sup> in particular a private citizen who deliberately and maliciously exercised the functions of an official;<sup>23</sup> and further, anyone who maliciously caused friends of the Romans to become their enemies.<sup>24</sup>

High treason was classed as a capital crime and was punishable by crucifixion, by being thrown to wild beasts in the circus, or by banishment to an island, according to the status of the delinquent.<sup>25</sup> The first-named mode of execution was normally chosen

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MAYER-MALY, *op. cit.*, pp. 236–239. KLAUSER leaves open the question whether the acclamations are to be explained as a local custom or as being linked up with Roman legal administration. BAUMSTARK, on the other hand, referring to Tacitus *Annales* i. 44., and to Maximinus *History of Augustus*, decides for the latter. MAYER-MALY believes he can show from Roman law sources (*C. Theod.* 6, 9, 2 pr., etc.), that the acclamations were in accordance at any rate with “legal trials in the provinces”; though he maintains, to be sure, that though the acclamations in the trial of Jesus were not without their basis in law, they did not justify Pilate's giving way.

<sup>21</sup> See DROSSAART BENTFORT, *op. cit.*, pp. 54 f. and C. W. WILTON, “The Roman Law of Treason under the Early Principate,” *Journal of Roman Studies*, 45 (1955), 73–81.

<sup>22</sup> *Dig.* 48, 4, 1, 1: *Maiestatis autem crimen illud est, quod adversus populum Romanum, vel adversus securitatem eius committitur.*

<sup>23</sup> *Dig.* 48, 4, 3: *Quive privatus pro potestate magistrature quid sciens dolo malo gesserit.*

<sup>24</sup> *Dig.* 48, 4, 4: . . . *utve ex amicis hostes populi Romani fiant.*

<sup>25</sup> *Dig.* 48, 19, 38, 2: *Auctores seditionis et tumultus, populo concitato, pro*

for persons in the provinces of the empire who had not the rights of a Roman citizen. Crucifixions were the order of the day, especially in the province of Judea. The last great tragedy of this kind had been enacted after the death of old Herod (d. 4 B.C.). The rebellion which broke out at that time in Judea was mercilessly suppressed and two thousand Jews were crucified by Quintilius Varus, prefect of Syria, who was to meet with such an inglorious end a few years later when his legions were annihilated by Arminius in the *Salus Teutoburgensis*.<sup>26</sup>

Therefore the "Crucify him!" shouters must have been well aware of the frightful fate to which they were delivering up Jesus. The procurator simply could not understand this attitude of the Jews toward one of their own race. Though by no means a model officer, he had sufficient sense of justice to bear in mind that a punishment should bear some proportion to the guilt. Therefore, he angrily challenges the Jews, who are so well versed in Roman law, to name the treasonable crime by which this Galilean has earned the most cruel of all punishments. "Why, what evil has he done?" (Mark 15:14), he asks.

But the mob is already tired of words. Emboldened by the vacillation of the judge, the people ignore his question contemptuously and repeat still more persistently their demand: "Crucify him!" (Mark 15:14).

Pilate was now paying well for his folly in entering into dealings with the people. This inexcusable tactical blunder<sup>27</sup> had drawn him into a situation which he could not master. He could have coped with the sanhedrists, but he could not get rid of the inflamed mob and pass on to the business of the day. Now he had to come to a decision, not merely as a judge but above all as a politician, and to do so forthwith. Surprise has been expressed

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qualitate dignitatis aut in furcam tolluntur, aut bestiis obiciuntur, aut in insulam deportantur.

<sup>26</sup> *Antiquities* xvii. 10. 10. § 295.

<sup>27</sup> There are many examples in BICKERMANN, *op. cit.*, pp. 209 f.; also in *Dig.* 49, 1, 12; 48, 8, 16; *Codex* 9, 37, 12, of the proneness of Roman judges to give way to popular clamor.

that Pilate did not avail of the expedient open to him in Roman law and adjourn the case for more thorough examination later;<sup>28</sup> but he had closed this way of escape to himself by his tactics in deferring to the mob. To pass on the trial to Rome was still more unthinkable in this situation, which was already bordering upon open riot (Matt. 27:24). Finally, Pilate had no choice but to surrender to the determined will of the fanatical mob, as he had done once before in the hippodrome of Cæsarea. The fact that he only abandoned his position step by step on this occasion might gain him our sympathy now were it not that the painful spectacle of a Roman judge himself becoming a lawbreaker through lack of courage, wisdom and strength of character, emerges all the more distinctly for this.

In order to placate the rabble he released Barabbas and gave orders that Jesus should be scourged (Mark 15:15; John 19:1).

Matthew alone inserts two further small, dramatic episodes into this portion of the passion narrative. While Pilate was sitting on the judgment seat negotiating with the Jews about the amnesty, he received a message from his wife, saying: "Have nothing to do with that just man, for I have suffered many things in a dream today because of him" (Matt. 27:19). And toward the end of that part of the story we read: "Now Pilate, seeing that he was doing no good, but rather that a riot was breaking out, took water and washed his hands in sight of the crowd, saying, 'I am innocent of the blood of this just man; see to it yourselves.' And all the people answered and said, 'His blood be on us and on our children'" (Matt. 27:24).<sup>29</sup>

<sup>28</sup> G. LIPPERT, *Pilatus als Richter* (1923), p. 25.

<sup>29</sup> The words "His blood be on us and on our children" correspond to a Jewish saying (2 Kings 1:16; 3:29; 14:9; Jeremias 28:35; Acts 18:6), and mean: May the responsibility and guilt fall upon us and on our children, see BILLERBECK, I, 1033, and STEINWENTER, *op. cit.*, p. 481, n. 6. H. M. COHN, "Sein Blut komme über uns," *Jahrbuch für jüdische Geschichte und Literatur*, 6 (1903), 82-90, understands the words as an utterance in favor of Jesus: His death is not desired, but should, on the contrary, be prevented. But this interpretation founders on the parallels and on the context. It is entirely conceivable that the shouters (or some of them) were honorably convinced of the justice of their cause and had no idea at all that they were "guilty"; in which case their cry cannot be re-

The two scenes are closely related. In the first, Pilate is warned by his wife against incurring guilt; in the second he emphasizes his innocence by word and gesture. Matthew's reason for recording these two scenes is clear: he wishes to underline the blamelessness of Jesus and at the same time to emphasize the guilt of the Jews. Even a pagan woman had recognized the innocence of Jesus and tried to save Him from the fate which His own people had intended for Him. And while Pilate, in the most emphatic manner possible, repudiated responsibility for the death of Jesus, the Jewish people, in frivolous high spirits, took this responsibility on themselves with equal emphasis. Here Matthew, passing from historical narrative to historico-theological assessment, so to speak, no longer uses the word "crowd" or "mob," but instead the expression, "all the people," "the whole nation." In doing so, he reproduces the standpoint of the primitive Church on the question of guilt: in its eyes the Jews in front of the praetorium were the representatives of that nation that had rejected its own Messiah and so incurred the judgment of God. The strongly polemical and biased character of these passages peculiar to Matthew alone has caused them to be generally regarded by critics of the gospels as legendary accretion.<sup>30</sup>

It seems doubtful whether this judgment is justified when one realizes that these two scenes were not likely to interest any other of the evangelists than Matthew. In their reports of the trial of Jesus obviously the main object of the evangelists is to show the factors which were instrumental in determining the outcome of

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garded as a wanton self-execration as it is usually taken to be (cf. for instance, B. WEISS, *Handbuch über das Evangelium des Matthäus* [8th ed., 1883], p. 542). The remarks of Ernest RENAN on this text in his *Vie de Jésus* (1883), pp. 423-426, are worth reading even if open to objection on some points.

<sup>30</sup> E. KLOSTERMANN, *Das Matthäus-Evangelium* (3rd ed., 1938), p. 221. S. ZEITLIN, *Who Crucified Jesus?* (2nd ed., 1947), pp. 174 f., regards Matt. 27:24 f. as an interpolation; but it is certain that the text always formed part of Matthew's Gospel. The fact that the sanhedrists later found fault with the apostles for wanting "to bring this man's blood" upon them is perfectly understandable and no proof that Matt. 27:25 is unhistorical (against contrary view of ISAAC, *op. cit.*, p. 493).

the trial. Therefore Mark and Luke, and also John (the latter partly for other reasons), could refrain from mentioning incidental scenes which were not of importance in this respect. Matthew, on the other hand, who is writing for Jewish Christians, is distinctly concerned to make clear to his readers the frightful guilt of their people. Therefore these two episodes were very opportune for him. They contain hardly anything that is historically improbable. It can, by chance, be proved that after the reign of Augustus the Roman governors were allowed to take their wives with them to the provinces.<sup>31</sup> We also learn elsewhere of Roman ladies of quality who were interested in the Jewish religion.<sup>32</sup> There is not a word to indicate that the dream is to be regarded as supernatural.<sup>33</sup> To be sure, the ceremony of washing the hands as a protestation of innocence is a typically Jewish custom, but it was not

<sup>31</sup> Augustus had not permitted the governors to take their wives with them to their posts; he only allowed a visit during the winter months: Suetonius *Augustus* 24. But from the time of Tiberius this prohibition could not be maintained. Already at the death of Augustus, Germanicus had his wife Agrippina with him in Germany (Tacitus *Annales* i. 40); at the beginning of the reign of Tiberius he had taken her with him to the East (Tacitus *Annales* ii. 54). At the same time Plancina, wife of Piso, was with her husband (Tacitus *Annales* ii. 55). In the fourth year of the consulate of Tiberius, to be sure, Cæcina proposed in the Senate that no prefect should be permitted to take his wife with him, but he did not succeed in carrying through his proposal (Tacitus *Annales* iii. 33 f.). Fr. MORISON is incorrect in this matter in *Wer wälzte den Stein?* (1950), p. 44.

<sup>32</sup> Cf. *Antiquities* xx. 8. 11. § 195 (Poppæa, wife of Nero, was a "god-fearing woman"); *Jewish War*, ii. 20. 2. § 560 (almost all the women in Damascus were sympathetic toward the Jewish religion); C. TISCHENDORF, *Pilati circa Christum, iudicio quid lucis afferatur ex actis Pilati* (1855), pp. 16 f., considers the assertion in the Gospel of Nicodemus that Pilate's wife was a proselyte to be credible. E. FASCHER, *Das Weib des Pilatus, Die Auferweckung der Heiligen* (1951), p. 27, sees in Matt. 27:19, "the most condensed form of a biographical apothegm," and rejects the condemnation of the passage as a tendentious legend: "Auch bei strenger historischer Kritik hat die Intervention einer hochgestellten Frau nichts Unwahrscheinliches."

<sup>33</sup> Anyhow, Matt. 27:19 cannot be used as a chronological index. We do not know at what stage of the proceedings the message arrived. Moreover, we do not know whether Pilate's wife sent the message as soon as she awoke, or whether she got up late or early that morning; clearly she did not begin her day at the same time as her husband began his, otherwise she would have told him about her dream at home. These remarks in disagreement with DOERR, *op. cit.*, p. 55, n. 28, who draws the conclusion from Matt. 27:19 that the hour given in John 19:14 is wrong. Cf. Excursus XIII.

unknown among pagans too,<sup>84</sup> and besides, we may assume that Pilate conformed to a Jewish custom here in order to make himself absolutely clearly understood by the Jews, who for the most part did not understand his words, which were spoken in Greek. One can safely credit the procurator, who had already been a good four years in Judea, with some knowledge of Jewish ceremonial, of which, moreover, the symbolical washing of the hands was by no means a rare example. We have documentary evidence that far more obscure Jewish customs than this were known to and imitated by pagans. For instance, a Greek once sacrificed a pair of birds in front of the synagogue in Cæsarea in order to mock the Jews as a leprous people by this mimicry of the Jewish ritual of purifying from leprosy.<sup>85</sup> The point that is somewhat dissatisfying is the literary location of the hand-washing scene in Matthew; it would be far more understandable if it had been placed after the report of the condemnation of Jesus by Pilate. Apparently that is actually its historical place.<sup>86</sup>

## EXCURSUS X

*The Release of a Prisoner at the Passover*

BILLERBECK was unable to produce any Jewish documentation for the custom of the Easter amnesty mentioned in the gospels (cf. I, 1031). There is, however, a passage in the Mishna tractate *Pesachim* VIII 6a in which that custom appears to be implied. This text has been known for a long time past. Christian SCHÖTTGEN already drew attention to it in *Horæ Hebraicæ et Talmudicæ in universum NT* (1733), p. 235, and G. BEER, the editor of the tractate in the Giessen Mishna, referred once more to the possibility of a connection between that text and John 18:39 (*Pesachim* [1912], pp. 55 and 173). In New Testament research, no value as proof and no particular significance has been attached to the text insofar as it has

<sup>84</sup> Deut. 21:6 f.; Ps. 26 (25):6; cf. BILLERBECK, I, 1032; Vergil *Aeneid* ii. 719; Sophocles *Ajax* 654; Herodotus i. 35.

<sup>85</sup> *Jewish War* ii. 14. 5. § 289.

<sup>86</sup> For instance C. M. GENELLI, TQ, 22 (1840), 49; J. PICKL, *op. cit.*, pp. 256-259, gives a detailed specification, with which DROSSAART BENTFORT, *op. cit.*, p. 58, n. 16, agrees.

been noticed at all, cf. for example, J. LANGEN, *Die letzten Lebenstage Jesu* (1864), p. 271, n. 2, and J. MERKEL in ZNW, 6 (1905), 306 f. In a study published in 1941, Charles B. CHAVEL has tried to prove that the Mishna text in question actually confirms the custom of a paschal amnesty in ancient Jerusalem ("The Releasing of a Prisoner on the Eve of Passover in Ancient Jerusalem," JBL, 60 [1941], 273-278). He is probably correct, at least in his main thesis.

According to H. DANBY, *The Mishnah Translated* (1950), 14 f., *Pesachim* VIII 6a runs as follows:

"They may slaughter for one that mourns his near kindred, or for one that clears away a ruin; so, too, for one whom they have promised to bring out of prison, for a sick man, or for an aged man that is able to eat an olive's bulk. For none of these in particular may they slaughter, lest they cause the Passover-offering to become invalid."

As the paschal lamb may only be slaughtered for such as are capable of eating it, the Mishna lays down the rule that persons who may possibly become disqualified to eat it, may not form an independent paschal company (*Chaburah*). Five categories of persons are enumerated. The first two groups are not permitted to form a paschal supper company of their own because they may count upon incurring a legal disqualification which would preclude them from partaking of the paschal meal, namely, those who mourn, that is to say, those who have lost a relative through death but have not buried him yet, may be defiled by the dead person at the last moment. Similarly, someone who opens up a heap of ruins, finds a dead person under it, and so becomes defiled. In addition, three cases of physical incapacity for the paschal supper are considered. Sick and old people may become so weak before the paschal meal as to be unable to partake of the prescribed minimum, a piece the size of an olive. A prisoner who has been promised release is now added to the category of potential physically hindered persons. Hence a paschal lamb must not be slaughtered especially for him either, as it might happen that for some reason or other the promised release would not take place and he would not be able to eat the paschal lamb slaughtered for him. The fact that the Mishna considers, besides the case of the sick and aged, what one might consider the quite exceptional and unlikely case of a prisoner promised release, permits the assumption that the release of an Israelite prisoner shortly before the evening of the paschal supper, i.e., on the fourteenth Nisan, was at least a frequent, but most probably a regular occurrence. Hence, this Mishna text actually represents a notable support for the New Testament account of the Easter amnesty. To be sure, the Mishna text fits in only with John's account, according to which the trial of Jesus and the release of Barabbas took place on the fourteenth Nisan, but not with the synoptics' account, which places the trial on the fifteenth Nisan.

CHAVEL does not go into the objections which have already been brought forward against such an evaluation of the *Pesachim* text; apparently he was unacquainted with them. J. MERKEL's main ground for regarding the

text as irrelevant is the fact that it speaks of a *promise* of release. "In our case there is no question of such a promise, but only of the actual release" (*op. cit.*, p. 307). But this objection is not sound, for the *promise* which the Mishna means is of course prior to the act of release. To be sure, the account in the gospels does not imply that a person granted an amnesty had previously received from the Roman procurator or someone else a formal promise of release. But the Mishna text can also be understood as meaning that some time before Easter certain sections of the populace hold out to a prisoner the prospect of obtaining his release. That the Mishna itself does not refer to an official promise or a consent in any way binding is surely borne out by the fact that the possibility of its not coming to pass is reckoned with. The friends of a prisoner could give him a prospect of release by offering to propose him to the procurator for amnesty on the eve of Passover. Hence, the case foreseen by the Mishna is in no wise at variance with the custom which the gospels assume to exist. There is yet another circumstance which points in this direction. Obviously the Mishna presupposes that the prisoner is in a non-Jewish, i.e., a Roman prison; for a person imprisoned in the Jewish prison in Jerusalem could have the paschal lamb brought to him in prison (H. L. STRACK, *Pesachim* [1911], p. 26). (Detention in a *Jewish* prison *outside* of Jerusalem could possibly have been meant too; but this would surely have been so improbable that it would not have been specially provided for by the lawmakers.)

The situation envisaged in the Mishna is therefore the following: An Israelite detained in a Roman prison in Jerusalem has a reasonable prospect but no certainty of being discharged from prison shortly before the evening of the paschal supper. As it is mentioned in the *Pesachim* tractate together with constantly recurrent cases of other kinds, this case too must have been one which recurred regularly, and normally, every year before the fifteenth of Nisan. If we add to this what the gospels report, or what can be assumed from them, we have a perfectly conceivable state of affairs: Barabbas, an Israelite imprisoned by the Romans in Jerusalem, has a prospect of being released from prison before the evening of the pasch, because he can count upon his friends asking for his release by way of the Easter amnesty, but his release is as yet uncertain because it depends not only on the pleas of the prisoner's friends but also on the will of the procurator. Hence, the custom mentioned in the gospels is actually confirmed by *Pesachim* VIII 6a. It is assumed by Mishna experts that the passages *Pesachim* VIII 1-8a already formed part of Meïr's Mishna (G. BEER, *op. cit.*, p. xvii).

The further findings of CHAVEL are less sure because they rest upon later sources. For instance, he puts forward another tradition from the Babylonian Talmud. The following explanation of this Mishna passage is attributed to Rabbi Johanan in a commentary written at the beginning of the third century A.D.: "Rabbi b. Bar Chana said in the name of Rabbi Johanan: This teaching applied only to a non-Jewish prison, but if someone is [detained] in a Jewish prison, the pasch may be slaughtered *only* for him, for as he has been assured [of release], he will be freed, for it is

written [Soph. 3:13]: "The remnant of Israel shall not do iniquity, nor speak lies" (*Pesachim* 91a; translation according to L. GOLDSCHMIDT, *Der babylonische Talmud*, II [1930], 599 f.).

CHAVEL (*op. cit.*, pp. 276-8) explains: If the Rabbi Johanan considers the case of the release of an Israelite prisoner not only from a pagan (Roman) but also from a Jewish prison, this obviously proves that he did not regard the custom of releasing a prisoner on the eve of Passover as being confined to the time of Roman rule in Palestine; in his opinion this custom already existed in the days when the Jews governed their own country independently, i.e., in the Hasmonean period. Now, CHAVEL recalls that according to the Torah, a person condemned for breaking a divine commandment could not be pardoned under any circumstances (Num. 35:31 f.). The prisoners of whom the Mishna speaks, he maintains, can therefore only be persons imprisoned for political offenses. It was such prisoners alone that the king or the governor could pardon. CHAVEL draws the following three conclusions from the Mishna text: 1. The custom of releasing a prisoner on the eve of Passover has a positive basis in Jewish sources; 2. the custom goes back at least to the pre-Roman period; 3. it affected only political prisoners (p. 277).

He presumes that the custom came into being during the turbulent years of civil war under the Hasmoneans, when the number of political prisoners was continually increasing. In those days, in order to pacify the people who streamed into the Holy City for the festival from Palestine and from the Diaspora, the Jewish king used to pardon and release a prisoner, this gesture being an indication that peace and harmony should reign during the time of the festival and that political strife should cease. The Hasmoneans were keenly interested in as many pilgrims as possible coming to Jerusalem, so he maintains, because these were a great source of income for the Temple and the priesthood (and the Hasmonean princes were priests themselves). In the course of time the people had come to regard this custom more and more as their right. Then, when the Romans took over Palestine, the custom was already so deeply rooted that they kept it up, the more so since they too reckoned on this generous gesture having a favorable effect on the crowds who were prone to create disturbances during the paschal festival.

## 12. THE SCOURGING, THE MOCKING, AND THE SHOWING TO THE PEOPLE

THE ROMAN scourging was carried out in a barbarous manner.<sup>1</sup> The delinquent was stripped, bound to a post or a pillar,<sup>2</sup> or sometimes simply thrown on the ground, and beaten by a number of torturers until the latter grew tired and the flesh of the delinquent hung in bleeding shreds. In the provinces of the empire this was the task of soldiers.<sup>3</sup> Three different kinds of implements were customary. Rods were used on freemen; military punishments were inflicted with sticks, but for slaves scourges or whips were used,<sup>4</sup> the leather thongs of these being often fitted with a spike or with several pieces of bone or lead joined to form a chain.<sup>5</sup>

The scourging of Jesus was carried out with these last-named instruments. Unlike Jewish law,<sup>6</sup> Roman law prescribed no maximum number of strokes. It is not surprising to hear that delinquents frequently collapsed and died under this procedure, which only in exceptional cases was prescribed as a death sentence.<sup>7</sup> According to Cicero, the notorious Gaius Verres, when governor of Sicily (73-71 B.C.), was wont to have scourging carried out in

<sup>1</sup> Cf. U. HOLZMEISTER, "Christus Dominus flagellis cæditur," VD, 18 (1938), 104-108; H. LECLERCQ, "Supplice de la Flagellation," DACL, V (1923), 1638-1643.

<sup>2</sup> Cf. Plautus *Bacchides* iv. 7. 25: Astringite ad columnam fortiter. Artemidorus *Oneirocrit.* i. 78: "Bound to a pillar he received many blows."

<sup>3</sup> Cf. Suetonius *Caligula* 26.

<sup>4</sup> Dig. 48, 19, 10; 68, 28, 2.

<sup>5</sup> Apuleius *Metamorphoses* vii. 30. 154; *Codex Theodos.* 8, 5, 2; 9, 35, 2. See the pictures in LECLERCQ, *op. cit.*, 1638-1643.

<sup>6</sup> Cf. 2 Cor 11:25; Acts 16:22 f. and Excursus VI.

<sup>7</sup> Dig. 18, 19, 8, 3: Plerique, dum torquentur, deficere solent.

a peculiarly inhuman manner. "Moriere virgis" (You will die of the rods), he once shouted to a delinquent as he handed him over to the lictors, and the latter ensured that his threat was not in vain.<sup>8</sup> A number of the Jews of Alexandria who were scourged on the order of the perfect, Flaccus, died during the punishment, and the rest only recovered after a long period of disablement.<sup>9</sup> Josephus records that he himself had some of his opponents in Galilean Taricheæ scourged until their entrails were visible.<sup>10</sup> The case of Jesus bar Hanan, the prophet of woe, whom the procurator, Albinus, had scourged until his bones lay bare, during the Feast of Tabernacles in 62 A.D.,<sup>11</sup> also makes one realize what the little word *φραγελλώσας* in Mark (15:15) means.

Why did Pilate order this terrible punishment for Jesus? The First Evangelist gives no answer to this question. On the other hand, it is clear from John's unambiguous account that the Roman decided upon this measure because he saw in it a last possibility of saving Jesus.

Scourging was inflicted by the Romans for various purposes. One has to distinguish scourging as an inquisitional torture,<sup>12</sup> as a death sentence (*fustuarium*, primarily a military punishment),<sup>13</sup> as an independent police chastisement,<sup>14</sup> and as the introductory stage to execution after sentence of death.<sup>15</sup> In the case of Jesus

<sup>8</sup> Cicero *In Verrem* ii. 4. 39. 85.

<sup>9</sup> Philo *In Flaccum* 10. § 75.

<sup>10</sup> *Jewish War* ii. 21. 5. § 612.

<sup>11</sup> *Jewish War* vi. 5. 3. § 304.

<sup>12</sup> Cf. Acts 22:24. The scourging of Jesus bar Hanan by Albinus (see previous note) was probably also an inquisitional punishment.

<sup>13</sup> Horace *Sat.* i. 2. 41 f.: Ille flagellis ad mortem cæsus.

<sup>14</sup> Pap. Flor. 61 (see note 7, previous chapter); *Jewish War* ii. 13. 7. § 269 (the authorities in Cæsarea punished the agitators with scourging and imprisonment). The scourging of the Alexandrian Jews by Flaccus (see note 9 above) is to be understood as similar. The sentence could be pronounced by the judge *de plano*: *Dig.* 48, 2, 6.

<sup>15</sup> Scourging before crucifixion: *Jewish War* ii. 14. 9. § 306 (Florus had Jewish citizens scourged and then crucified); § 308 (he had Jews of the knightly class scourged in front of his judgment seat and then crucified); v. 11. 1. § 449 (Titus had Jewish prisoners scourged and tortured and then crucified); vii. 6. 4. § 200, 202 (Bassus had Eleazar stripped and scourged, and then had a cross erected); Livy xxxiii. 36: Alios verberatos crucibus adfixit, qui principes coniura-

the scourging was ordered by Pilate as an independent punishment; it was not a torture to extract a confession,<sup>16</sup> nor was it a subsidiary punishment preceding execution.<sup>17</sup> The sentence of crucifixion only followed later. Pilate had come to realize that he could not get away with letting Jesus off completely unpunished. He continued to hold out against crucifying Jesus; therefore he decided upon scourging in the hope that the Jews would content themselves with this very harsh punishment and desist from their more drastic demand. It is clear that the legal ground for this measure was not the charge of high treason, which would not have been punishable by a lesser penalty than death. With what *crimen leve* Pilate formally justified the order to scourge Jesus, or whether he gave any reason at all for it, we do not know. The conjecture that the procurator wished to awaken the impression among the Jews that he had now decided to crucify Jesus, is a far-fetched one,<sup>18</sup> for since he had not passed a death sentence, the Jews could not have taken the scourging to be a prelude to crucifixion. Besides, it should have been clear to Pilate that the Jews would insist on their demand more vehemently and obstinately than ever after the scourging. The words which Luke puts

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tionis fuerant. Scourging before hanging: *Jewish War* vii. 5. 6. § 154; before burning: *Jewish War* vii. 11. 3. § 450; before beheading: *Acta Iustini et sociorum* v. 8 (G. RAUSCHEN, FLP, III [2nd ed., 1914], 119).

<sup>16</sup> R. W. HUSBAND, *The Prosecution of Jesus* (1916), p. 268, takes the opposite view. A notable representative of this view last century was L. HUG, *Zeitschrift f. die Geistlichkeit des Erzbisthums Freiburg* (1803), pp. 5 ff., who held that in John 19:4, Pilate establishes distinctly enough the result he had obtained by torturing Jesus. But this is definitely not the correct interpretation of the text.

<sup>17</sup> Many of the more recent commentators revert to this interpretation. For instance, J. CANTINAT, "Jésus devant Pilate," *La Vie Spirituelle*, 86 (1952), 241, but as he rightly finds the announcement of the death sentence recounted in John 19:13-16, he must conclude that Pilate announced the death sentence *twice*, which is juristically unthinkable. According to U. HOLZMEISTER, *ZkTh*, 39 (1915), 349, and INNITZER, *op. cit.*, p. 220, Pilate at first left the purpose of the cruel measure *in suspenso*, as he already reckoned with the possibility of a death sentence. But this attempt to reconcile the seeming discrepancies between Mark-Matt. and Luke-John, is hardly necessary. In Mark too the scourging probably precedes in time the sentence of crucifixion (see Excursus XI).

<sup>18</sup> Thus B. WEISS, *Handbuch über das Evangelium des Johannes* (7th ed., 1886), p. 657, and H. ALLROGEN, *ThG*, I (1909), 706.

in his mouth twice: "I will therefore chastise and release him" (23:16, 22) show what he meant and what he wished to convey to the Jews by the punishment. When Pilate subjected Jesus to this cruel punishment though believing Him innocent, he failed in a most inexcusable manner in his duty as judge.

The evangelists omit the description of this cruel punishment, hence we have no details of the scene of the incident. It is generally assumed that the scourging was carried out before the eyes of the people on the public square in front of the *prætorium*.<sup>19</sup> Actually, it was on this same square that the procurator, Gessius Florus, had the condemned Jews scourged thirty-six years later,<sup>20</sup> but on that later occasion the circumstances were of course different from what they were in the case of Jesus. Florus must have considered it expedient to carry out the scourging in public in order to terrify and intimidate the people; moreover, the scourging in his case was undoubtedly a preliminary to crucifixion. When Jesus was scourged, on the other hand, the death sentence had not yet been passed. Moreover, Pilate had no reason to carry out the punishment in public with a view to intimidating the populace. According to the account in John's Gospel it is practically beyond all doubt that Jesus was scourged, not on the square before the *prætorium* but inside the building.<sup>21</sup>

<sup>19</sup> P. BENOIT, RBibl, 59 (1952), 541, 545, n. 2, holds this to be "certain"; similarly GOGUEL, *op. cit.*, p. 439; less definitely INNITZER, *op. cit.*, p. 219.

<sup>20</sup> See note 15 above.

<sup>21</sup> The only reason for the words "Pilate then *took* Jesus" (John 19:1) would be to convey that the procurator took the Accused from the scene of the foregoing proceedings to another place, which in this case could only be the interior of the *prætorium*. But since no change of place is indicated between the scourging (19:1) and the crowning with thorns (19:2 f.), and since the latter incident definitely took place within the palace (explicitly so in Mark 15:16; Matt. 27:27, and likewise in John 19:3 f.: after the crowning with thorns Pilate steps "*out*" before the populace with Jesus, and the soldiers would scarcely have dared to mock Jesus as "King of the Jews" before the assembled crowd), the scourging too must have taken place within the *prætorium*. On the other hand, it is utterly incredible that Jesus should have been suddenly taken into the interior of the palace after the scourging, and mocked for a while in there. The mocking is obviously a boisterous sequence to the scourging. It is set in motion by the same persons who had carried out the scourging, and also no doubt in the same place as the latter scene. This explains the Mark (Matt.) account. In this it only *seems*

The soldiers must have chastised Jesus at the scourging with all the mercilessness with which they were wont to carry out their gory duties, for on the way to the place of execution He was no longer able to carry His own cross. Nevertheless, the fact that Pilate was surprised that Jesus died so soon on the cross shows that His injuries cannot have been mortally dangerous. The details produced by later generations concerning the number of strokes Jesus suffered, the number of soldiers who took part in the scourging, and their nationality, and so forth,<sup>22</sup> belong to the realm of fantasy. Nor can any of the various "Columns of the Scourging" shown here and there—in the Church of the Holy Sepulchre in Jerusalem and the Church of St. Praxedes in Rome, for instance—be reasonably claimed to be genuine.

The scourging of the man who claimed to be king of the Jews caused a general sensation among the soldiers of the cohort quartered in the *prætorium*.<sup>23</sup> After the sentence had been carried out they seized the welcome opportunity of giving vent to their rowdy insolence on a prominent representative of the Jewish people so hated and despised by them. They knew from the trial that He claimed to be king, and so they proceeded to make a mockery of His kingship by an uproarious masquerade (Mark 15:16–20; John 19:2 f.).<sup>24</sup> A purple *chlamys*, a staff-like sceptre, and a gilded wreath of leaves belonged to the regalia of the Hellenic vassal kings; only the head king wore the diadem, a forehead band

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to be implied that "Jesus was led into the forecourt of the *prætorium* after the scourging" (INNITZER, *op. cit.*, p. 219). In the gospel of Mark (Matt.), the report of the mocking is only added on after the real trial narrative, which the evangelist had skipped (see Excursus XI). That Jesus was *clothed* at the beginning of the mocking scene is unknown to Mark (15:17); only in Matt. 27:28 is there mention of a "stripping," but here too only in some of the MSS (S\* A etc. against S<sup>8</sup>BD etc.). On this subject see E. KLOSTERMANN, *Das Matthäus-Evangelium* (3rd ed., 1938), p. 222.

<sup>22</sup> See U. HOLZMEISTER on this, VD, 18 (1938), 108.

<sup>23</sup> The expression "the whole cohort" (Mark 15:16) is naturally only popular exaggeration.

<sup>24</sup> Regarding this cf. R. DELBRUECK, "Antiquarisches zu den Verspottungen Jesu," ZNW, 41 (1942), 124–145. Regarding the crown of thorns see H. St.Y. HART, JTS, 3 N.S. (1952), 66–75.

woven of white wool. The soldiers now fitted Jesus up with ridiculous makeshift substitutes for these three insignia. They threw around His naked body a red cloak, either the worn out *chlamys* of a lictor or some shabby purple rug, placed in His hand a reed-like rod, probably one of the bamboo canes used in military floggings (this is recounted only by Matthew), and pressed down on His head a wreath plaited from the branches of some shrub such as acanthus. This wreath of thorns was not meant primarily as a torture; it was part of the mock royal attire like the other objects. After they had dressed Jesus up in this way as a vassal king, the soldiers proceeded to pay Him mock homage, bending the knee before Him and crying, "Hail, King of the Jews!" The salutation is reminiscent of the Roman "Ave, Cæsar!" whilst the bowing of the knee, or so-called *proskynesis* was one of the essential requisites of Hellenistic homage to the ruler. The fact that the soldiers spat at Him too might conceivably be interpreted as a parody of the kiss of homage customary in the East. On the other hand, their buffeting and hitting of the defenseless and exhausted prisoner with sticks and with their fists was mere savagery. Though the gospels do not mention this explicitly, we must assume that Jesus was sitting throughout this mocking scene: the king on his throne receiving the homage of his subjects.

All the features of this rough farcical play are comprehensible in the light of the concrete situation—the claim of Jesus to be a king on the one hand and the mentality of the soldiery on the other; therefore the efforts of scholars to draw parallels with the *mimus*, the Roman saturnalia, or the Persian Sakai festival, are superfluous.<sup>25</sup> The opinion that the soldiery wished to mock Jesus

<sup>25</sup> Cf. the critical remarks of E. SCHÜRER, ThLZ, 30 (1905), 588 f. and Ed. MEYER, I, 187 ("Durch derartige übel angebrachte Gelehrsamkeit wird die Szene nur verdorben"). K. KASTNER, in *Jesus vor Pilatus* (1912), pp. 36–52, cautiously analyzes the numerous hypotheses put forward concerning the derivation of this mocking game. The more recent literature on the subject has been assembled by J.-M. VOSTÉ, *De passione et morte Iesu Christi* (1937), pp. 222–230. Cf. further, T. ARVEDSON, "Jesus som narikonung," *Svensk Exeg. Årsbok*, 12 (1947), 25–35. L. RADERMACHER, "Zum Prozess Jesu," SAW, phil-hist. Kl., 79 (1942), 22–26, gives on p. 23 some historical analogies for the mocking of Jesus,

as a victorious general is likewise incorrect.<sup>26</sup>

When Jesus was brought back to Pilate dressed in the garments and regalia of mockery, the latter, who meantime had remained in the *prætorium* or possibly may even have been present at the scene in the inner courtyard, stepped out before the populace once more in order to report the return of the Accused: "Behold, I bring him out to you, that you may know that I find no guilt in him" (John 19:4). What he means by this is not quite clear. Are the Jews to conclude, from the fact that he is continuing the trial, that he does not propose to fall in with their point of view? Or does he mean: You can see from the attire in which I will show Him to you, that I consider the Accused a figure of fun and not a criminal worthy of execution? The latter interpretation is doubtless much the more commendable. Therefore, Pilate apparently tolerated the unseemly fool's play of the soldiery because he hoped that by showing Jesus to the mob in the regalia of mockery, he would convince them of His harmlessness.

If this interpretation is correct, then the meaning of the words with which Pilate showed Jesus: "Ecce homol" Behold the man (John 19:5), is clear.<sup>27</sup> This is not primarily an appeal to their

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for instance the mocking of the pseudo-emperor Frederick II, the similar treatment of a man who emerged in Italy and announced he was King Sebastian of Portugal, and finally, the scene in Shakespeare's *Henry VI* (Part I, Act II, 4). Hence here the aim is not to show the derivation of the gospel scene, but rather to illustrate it.

<sup>26</sup> J. PICKL, *op. cit.*, pp. 134-141, is cited with approval by H. VAN DER LOOS, *op. cit.*, p. 192. To this one must object 1. that Jesus is not mockingly acclaimed as "victorious general" but as "King of the Jews"; 2. PICKL's assertion that only the diadem is a symbol of kingship, but that the wreath is a purely military mark of distinction, is incorrect; the vassal princes—and naturally a "King of the Jews" would be one of these—wore the wreath of gilded leaves; 3. the assumption that Jesus had been accused of raising an abortive armed revolt is pure fantasy.

<sup>27</sup> The popular German translation, "Seht, welch ein Mensch" does not correspond with the Greek wording. Already in TQ, 22 (1840), 52 they were found "incomprehensible" by C. M. GENELLI. But neither is it likely that Pilate meant: "Here is the man! Take him! I will have nothing more to do with the matter!" (as for instance J. PICKL, *op. cit.*, p. 113, appears to interpret the words). This interpretation is excluded mainly because of John 19:6; it is only then that Pilate says: "Take him yourselves," and the reason for these words, spoken in an angry tone, is that Pilate sees the hopes he had placed on the showing of Jesus (19:5) frustrated.

humanity. True, the sight of the terribly disfigured prisoner, whose face bore the fresh traces of the bloody ill-treatment He had suffered, should have had a shattering or at least a chastening effect on the spirits of the rioters, who were seething with hatred. But Pilate's prime motive is to demonstrate the harmlessness of the alleged pretendant to the throne. He expects that the people on beholding this caricature of a king, would see His claim to kingship and also the accusation based on it, in its ridiculous light.<sup>28</sup>

Here again Pilate proved himself a bad psychologist. Angry passion can reach a degree when it is proof against any sense of humor or feeling of compassion. So far from being softened by the sight of Jesus, the chief priests and their attendants—the only persons named here—now more merciless than ever, shout: "Crucify him! Crucify him!" (John 19:6). (Perhaps in naming only these groups the evangelist means to convey that the rest of the populace were at least somewhat moved.) The procurator's third effort to save Jesus had now failed.

Bitterly angered by this new failure, Pilate shouted at the Jews: "Take him yourselves and crucify him, for I find no guilt in him" (John 19:6). Naturally, in saying this, he is not seriously authorizing the Jews to condemn and crucify Jesus;<sup>29</sup> as we know, crucifixion was not provided for at all in Jewish criminal law. Neither is Pilate jeering at the powerlessness of the Jews, who have been deprived of capital jurisdiction. His words, which actually grant what cannot be accepted, are in fact no more than a furious repudiation of the Jewish demand. The crowd have just

<sup>28</sup> Similarly Th. ZAHN, *Das Evangelium nach Johannes* (1908), p. 629, and A. WIKENHAUSER, *Das Evangelium nach Johannes* (1948), p. 270.

<sup>29</sup> In disagreement with J. LANGEN, *Die letzten Lebensstage Jesu* (1864), pp. 288 f. and TQ, 44 (1862), 431 f.; and M. VON ABERLE, TQ, 53 (1871), 56. LANGEN paraphrases: "I cannot take responsibility for crucifying Him because I consider Him innocent; if you want to take the responsibility on yourselves, you may do so for all I care!" One could credit such illegal procedure (cf. *Dig.* 1, 16, 6) to Pilate without hesitation; but the Jews did not accept his offer, LANGEN maintains, because in that case the execution of Jesus would have been actually murder!

been shouting: "Crucify him!" to which Pilate declares, in effect: I at any rate have no intention of doing so. And he justifies his refusal on the ground that he is personally convinced of the innocence of Jesus.

Replying to this self-justification, the Jews declare that Jesus is a criminal worthy of death according to their own law: "We have a Law, and according to that Law he must die, because he has made himself Son of God" (John 19:7).<sup>30</sup> Here, for the first and only time, they come out with the charge of blasphemy upon which their own sentence was based. Does this mean that they intend to abandon their charge couched in political terms as hopeless and to replace it from now on with the other?<sup>31</sup> No! The new argument was only designed to support their own charge. Even if the procurator was not obliged to take notice of purely religious offenses, he was nevertheless obliged to consider as far as possible the religious sentiments and wishes of the populace. By pointing out to him that Jesus is punishable by death according to their own law (Lev. 24:16), the Jews try to move this Roman officer who regards Jesus as a harmless person, to view their political accusation in a different light. Their words must

<sup>30</sup> Of course the law to which the Jews referred was the Jewish law, and not, as S. ZEITLIN, *Who Crucified Jesus?* (2nd ed., 1947), p. 168, makes out, Roman law. John 19:7 is, moreover, a further proof that the Sanhedrin did not have the right at that time to execute those guilty of crimes against religion within the meaning of the Jewish law. For otherwise, Pilate would now have joyfully seized the opportunity of turning over to the Jewish forum this case which he definitely wanted to get rid of. In reality he "feared the more." So the text confirms John 18:31. Besides, it would seem to prove that Pilate did not have merely to examine and confirm a Jewish verdict, for even if the Jews let it be seen that they had already ascertained Jesus' guilt according to their law, they nevertheless refrained from referring explicitly to the death sentence passed by the Sanhedrin.

<sup>31</sup> This is the view of PICKL, *op. cit.*, pp. 114 f., who regards John 19:6-16 as a new trial, clearly separated from the first one. From now on the matter in question is no longer the alleged crime of lese majesty, but the Jewish sentence for blasphemy, which Pilate is to execute in the form of crucifixion. But Pilate could have rejected this purely Jewish matter right away on the grounds of incompetence to judge it! When PICKL expresses the opinion that Pilate wanted to achieve the release of Jesus, which could only be given by the Sanhedrin, then this contradicts John 19:10. DROSSAART BENTFORT, *op. cit.*, p. 56, n. 12, also disagrees with PICKL.

convince him that their attitude toward Jesus is due to reverence for their Law, and not to hate and envy.<sup>82</sup>

The information that Jesus had declared Himself to be the Son of God made a deep impression on Pilate. Could this accused man really be a higher being? The idea of gods manifesting themselves in human form was by no means an impossible one to pagan antiquity.<sup>83</sup> The personality of Jesus, His quiet humility, and His silent air of sublimity had obviously inspired in the procurator not merely astonishment but also a certain degree of awe. This feeling of awe was now intensified. So he took Jesus back into the *prætorium* with him, in order to question Him there concerning the mystery of His personality (John 19:8-11). "Where art thou from?" he asks Him. This means: "Art thou of earthly or of heavenly origin?"<sup>84</sup> But Jesus gave him no answer. During the first hearing He had clearly enough testified to His divine mission, but had evoked in the pagan judge nothing more than a sceptical shrug of the shoulders. For only faith could pierce the mystery of His person.

The silence of Jesus annoyed Pilate. To break it he reminded

<sup>82</sup> Cf. J. LENGLE, *Hermes*, 70 (1935), 319: "Die Verurteilung Jesu wegen Gotteslästerung in der Nachtsitzung spielt also bei der Verhandlung vor Pilatus keine Rolle, wenn auch zur Unterstützung des hauptsächlichsten Klagepunktes, ebenso wie dies vor anderen römischen Gerichten üblich war, noch andere angebliche Vergehen, auch religiöser Art, vorgebracht wurden." MAYER-MALY, *op. cit.*, pp. 234 f.: "Der Anklagepunkt des abgeschlossenen Verfahrens vor dem Synedrium wird im römischen Provinzialprozess—in dem es nicht um Gotteslästerung, sondern um Hochverrat geht—verwertet. Dies wohl nicht aus später korrigierter Rechtsunkenntnis, sondern angesichts des Fehlens von für die prozessentscheidend gewordene Masse zugkräftigen Argumenten." Occasionally John 19:7 is understood (for instance, by M. VON ABERLE, *op. cit.*, p. 57) as being a political indictment on the ground that to "make oneself Son of God" would be tantamount, according to Roman ideas, to "usurping the Imperial throne." But the fact that the Jews appeal to *their* law speaks against this.

<sup>83</sup> Cf. G. P. WETTER, *Der Sohn Gottes* (1916), p. 17; A. J. FESTUGIÈRE, *Le monde gréco-romain au temps de Notre-Seigneur Jésus-Christ*, II (1936), 114 ff.; L. BIELER, *Theios Aner. Das Bild vom "göttlichen Menschen" in Spätantike und Frühchristentum*, I (1935), *passim*; Acts 14:11-18.

<sup>84</sup> This alone can be the meaning of the question. In the opinion of M. VON ABERLE, *op. cit.*, p. 58, the question is materially identical with Luke 23:6; Pilate is making a renewed effort to pass the Accused over to the jurisdiction of Herod.

Jesus that he, the judge, had power of life and death over Him, the Accused: "Dost thou not speak to me?" he asked. "Dost thou not know that I have power to crucify thee, and that I have power to release thee?"

At this Jesus pointed out to the procurator that the power in which the latter felt he could pride himself was a power of a particular kind. "Thou wouldst have no power at all over me were it not given thee from above." These words do not mean to say, as is so often asserted, that the authority of the state rests upon God, the source of all authority (a thought which Paul develops in Romans 13:1 f.). No, Jesus is correcting the naïve sense of power of the procurator who, simply because he holds the highest authority here and now, believes that he has the power of life and death over Jesus. It is not the earthly rights and means, which are at the disposal of the bearer of the power of the state, that have given him power over Jesus, but rather, an ordinance "from above," that is to say, the mysterious will of God. Without this will, Pilate would never have been in the position he is in now, to sit in judgment on the Son of God. But in God's plan of Redemption, the Roman official is the instrument chosen to bring Jesus to the Cross, and however he strives against it, he will have to do it, because he cannot escape either the plans of God or the force of earthly combinations, in this case primarily the demand of the Jews, and his own personal inadequacy to cope with the situation. "Therefore, he who betrayed me to thee has the greater sin." Because Pilate is acting, not on his own free volition but in the execution of the special authority against Jesus given to him by God, his guilt is less than that of the Jews, who are striving for the death of the Messiah purely out of hate and wickedness.<sup>35</sup>

<sup>35</sup> That difficult "therefore" in John 19:11 is interpreted in this way by BELSER, *op. cit.*, pp. 385 f.; H. VON CAMPENHAUSEN, "Zum Verständnis von Joh. 19:11," ThLZ, 73 (1948), 387-392, and CANTINAT, *op. cit.*, p. 245. Exegesis not in keeping with the text: R. THIBAUT, "La réponse de Notre-Seigneur à Pilate (Jean 19:11)," NRT, 54 (1927), 208-211; he sees in the divine character of the One betrayed the reason of the greater sin. Similarly P. P. FLOURNOY, "What Fright-

Pilate rightly understood the reference to the power given from above as an indirect answer to his question where Jesus was from. So he cut short the hearing, determined to release the mysterious Prisoner (John 19:12).

## EXCURSUS XI

*The Placing of the Scourging and Mocking Scenes*

ALL FOUR evangelists record the scourging, but they differ one from another in details. Three forms of narration are distinguishable here:

1. Mark-Matthew: "[Pilate] . . . released to them Barabbas, but Jesus he scourged and delivered to be crucified" (Mark 15:15 = Mt. 27:26). Here the scourging is so closely related to the crucifixion that it gives the impression of being considered the introduction to it. Linguistically, it is true, the two acts are kept apart. The order to be scourged is a different act from the delivering to be crucified and, moreover, one which precedes it. It will not do to relate the participle *φραγελλώσας* closely to the final phrase, "to be crucified," as J. A. KLEIST would do, *The Gospel of St. Mark* (1936), p. 230. If the evangelist had intended the meaning which this produces, he would have written: "He delivered Jesus to be scourged and crucified" (*ἵνα φραγελλωθῇ καὶ σταυρωθῇ* or *ἵνα φραγελλωθεὶς σταυρωθῇ*). L. WENGER, *Die Quellen des römischen Rechts* (1953), p. 287, n. 11, has rightly recognized that the phrase used by all the evangelists, "delivered (him) to be crucified," is equivalent to a description of the announcement of the death sentence, i.e., that it means: "He condemned Him to the death of the cross." Hence, it amounts to saying that the death sentence was passed only after the scourging.

2. Luke: [After the return of Jesus from Herod, Pilate declares], "I will therefore chastise him and [then] release him" (Luke 23:16). Pilate makes the same pronouncement once more immediately before releasing Barabbas (Luke 23:22). Here the scourging is merely proposed by Pilate; the fact that it was really carried out is not mentioned.

3. John: [After the failure of the amnesty suggestion] "Pilate *then* took Jesus and had him scourged." Here the scourging is quite distinctly a punishment independent of the crucifixion. After it had been inflicted the proceedings before Pilate are resumed and only then is the death sentence

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ened Pilate?" Bs, 82 (1925), 314-320, whose interpretation, however, is far from clear. PICKEL, *op. cit.*, p. 116, explains the text as: "Kaiphās, der Jude und Hohepriester, hatte viel mehr Möglichkeiten als du, zu erkennen, dass ich von oben bin; darum ist seine Schuld, mich zu verurteilen und dir zu überliefern, viel grösser."

spoken, whereupon the Way of the Cross begins immediately. John appears to lay a certain emphasis on the separateness in action and in time of the scourging and the crucifixion, because he marks the time of both acts with the adverb "then." After the Barabbas pericope we read: "Pilate *then* took Jesus and had him scourged" (19:1). After John had recounted how Jesus was mocked, led out before the people by Pilate, and examined within the *prætorium* once more, and how the crowd finally threatened to complain about Pilate to Cæsar, he concludes with the remark: "*Then* he handed him over to them to be crucified" (19:16).

As for Luke's account, one must assume that he refrains from mentioning the actual accomplishment of the scourging because he wishes to make Pilate appear in the most favorable light possible. The only question is whether the scourging is correctly placed by Mark-Matthew or by John.

It can be put forward in favor of Mark-Matthew that according to Roman criminal practice crucifixion was always preceded by scourging. It must be observed, however, that scourging as a punishment accompanying crucifixion could only be carried out if sentence of death had been passed. As already remarked, the only phrase in Mark-Matthew that can be considered a description of a death sentence is: ". . . but Jesus he (scourged and) delivered to be crucified." Hence, considered exactly, the following ground plan emerges in Mark-Matthew: Release of Barabbas—scourging of Jesus—condemnation of Jesus to be crucified. If it accordingly emerges, even from the summary account of these two synoptics, that the scourging was an independent punishment and that between its accomplishment and the close of the trial further proceedings before Pilate can have taken place, that does not prevent us from trusting the account given in the Gospel of St. John, which inserts a whole series of happenings between the scourging and the condemnation. Of course the scourging did not take place twice; if Jesus had really undergone a second chastisement Pilate could not have expressed surprise later that He should have died so quickly on the cross (compare Mark 15:44).

It is more difficult to place the mocking scene correctly. The problem is: Did the mocking (crowning of thorns) take place *before* or *after* announcement of the death sentence? Mark and Matthew place the pericope at the end of the account of the trial. (Luke passes over this episode also, again, apparently, in order to exculpate the Romans). As the "delivering to be crucified," that is to say, the announcement of the death sentence, comes first in Mark-Matthew, and the soldiers, after the mocking, take Jesus out to crucify Him, the sequence of events which emerges is: condemnation, mocking, crucifixion. And it is easy, in fact, to understand the mocking coming in this order. Jesus has just been condemned as "King of the Jews"; Pilate has withdrawn; the preparations for the execution are made; and the interval which thus ensues is used by the soldiers to perform a rowdy farce with the condemned Man who has been brought into the *prætorium*. Besides, one may surely assume that before condemnation the soldiers would hardly have dared to have made this Person, whom the

procurator was so noticeably protecting, the object of their boisterous and cruel mockery, apart from the fact that they could not have held up the proceedings for their pleasure.

John, however, places the mocking period immediately after the scourging, which is clearly described by him as a coercive punishment. It is possible that John, working on the principle of systematic or cue composition, may have chosen this order of events because soldiers were in action in both. But the report of the mocking in John cannot be simply detached from the existing sequence of events, for in the next trial scene described by John the mocking is assumed to have taken place: when Jesus was shown to the people again He was wearing the crown of thorns and the purple garment. Hence, according to John the mocking, like the scourging, definitely took place *before* the announcement of the death sentence.

In the matter of the placing of the mocking scene, there are therefore two accounts, not readily reconcilable, to be distinguished. The historian will of course have to ask himself which of the two accounts is the historically correct or most probable one. If one decides for the synoptic version, then one must regard the sequence scourging-mocking-condemnation in John as due to the systematic technique of narration, and the scene John 19:5 as an embellishment due to the shifting about. If, on the other hand, John's report is regarded as the more exact, then one could attribute the form of the synoptic account to the synoptics' aim of first finishing with the trial narrative and then adding the incidental scene which does not belong to the trial itself. In this case a slight textual discrepancy has to be faced in that Mark 15:20 does not seem to leave any room for the events recounted by John as taking place after the mocking. According to Mark-Matthew, the Way of the Cross began directly after the mocking: "And when they had mocked him, they took the purple off him and put his own garments on him, and led him out to crucify him." The question can hardly be decided with absolute certainty. Although there are some historical and psychological considerations which speak in favor of the synoptic account, one must give John's account the preference as being the more detailed.

### 13. THE DEATH SENTENCE PASSED BY PILATE

PILATE DID NOT succeed in carrying out his intention, for as soon as the Jews noticed that he was about to finally reject their demand, they played their last and most important trump card. "If thou release this man," they said, "thou art no friend of Cæsar; for everyone who makes himself king sets himself against Cæsar" (John 19:12). So they actually went as far as to openly threaten to denounce him to Cæsar!

What a grotesque situation! The highest Roman official in Judea has to endure being accused of lack of loyalty to the emperor by the representatives of a nation more passionately seething with hatred for the Roman yoke than almost any other in the empire. Paradoxical and absurd though this threat may have seemed to the procurator, he could have had no illusions whatsoever as to the Jews' ability to carry it out, and the disastrous consequences for him of such a step on their part. If he were denounced in Rome for letting off a man who had been proved guilty of claiming to be king of the Jews, he would definitely incur serious suspicion of negligence and treason—of favoring elements inimical to the emperor. As things were, he would find it difficult to clear himself of such suspicion, in which case he would expect to find himself treated and punished as being himself guilty of lese majesty. For at that time, Rome was quite ruthless in such matters. It is recounted of the Emperor Tiberius, in particular, that in nothing was he more sternly watchful than in preserving the imperial prerogatives, and that he was more piti-

less in his punishment of crimes of so-called "lese majesty" than of any others.<sup>1</sup>

Hence it was that Pilate's resistance finally broke down under this infamous Jewish threat. His fear of the sinister and suspicious emperor was even greater than his awe of the mysterious personality of the Accused; his own safety seemed more important to him than the sanctity of the law. "This victory is the most impressive possible example of the power of demagoguery in influencing history; the power of might over right. Pilate's attitude is a perfect example of the failure of intellectual argument in the face of a riotous crowd."<sup>2</sup>

He had the Prisoner led out of the *prætorium*, mounted the tribune and sat down<sup>3</sup> on the judgment seat (John 19:13) in order to pass in due form, *e superiori* and publicly, in the presence of

<sup>1</sup> Suetonius *Tiberius* 58: *Iudicia maiestatis atrocissime exercuit*; *ibid.* 61: *Sub quo . . . omne crimen pro capitali recipiebatur etiam paucorum simpliciumque verborum*. Tacitus *Ann.* iii. 38: . . . *addito maiestatis crimine, quod tum omnium accusationum complementum erat*. E. Bammel, *ThLZ*, 77 (1952), 209, n. 1, considers that the attitude of Pilate is not yet satisfactorily explained by this: "Nur in einer hektischen Situation konnte der Jesusprozess für Pilatus zum Fallstrick werden," and such a situation had come into being after the downfall of Seianus (31 A.D.). Tiberius certainly did react sharply to crimes of lese majesty, but all the details we have of such action were related to the peculiar state of affairs in the capital, and besides, a real examination followed such charges normally.—But would not Pilate, who had all sorts of scores piled up against him already (*Philo Leg. ad Caium* 38. § 301 f.), look forward to such a "real examination" with extremely mixed feelings? Regarding treason trials under Tiberius see F. B. Marsh, *The Reign of Tiberius* (1931), pp. 289 ff., and E. Koestermann, "Die Majestätsprozesse unter Tiberius," *Historia*, 4 (1955), 72–106, in which it is shown that the reports of Tacitus on such trials are not distorted by bias, as many scholars assume them to be.

<sup>2</sup> Mayer-Maly, *op. cit.*, p. 235.

<sup>3</sup> The Greek words could also be translated as: Pilate set Him on the judgment seat, as maintained by A. Harnack, *Bruchstücke des Evangeliums und der Apokalypse des Petrus* (2nd ed., 1893), pp. 63 f.; P. Corsen, *ZNW*, 15 (1914), 338–340; A. Loisy, *Le quatrième Évangile* (1903), pp. 867 ff.; G. H. C. Macgregor, *The Gospel of John* (1928), p. 342; J. Bonsirven, *Bibl*, 33 (1952), 512 f., and A. Kurfess, *ibid.*, 34 (1953), 271. In this case the scene John 19:13 f. would be a repetition of the *Ecce Homo* scene, 19:4 f., in a more blatant form. It is quite incredible, however, that Pilate should have made a second attempt to save Jesus by making a laughingstock of Him because of His claim to kingship. See further J. Blinzler, "Der Entscheid des Pilatus—Exekutionsbefehl oder Todesurteil?" *MThZ*, 5 (1954), 171–184, esp. 176–181.

accusers and Accused, a verdict at variance with his convictions as judge but which, owing to the threat of the Jews, had become unavoidable. Enraged at the shameful role forced upon him, he couched his sentence in a form which was bound to offend the Jews. Instead of saying, to register the guilt of the Accused: "He has made himself king of the Jews," he used the ironical words: "Behold, your king!" (John 19:14). Hence he pretended to recognize the kingly claim of Jesus, whom he was being obliged to condemn as a political offender by saying in effect: This man guilty of high treason is your king. In this way "Pilate took revenge on the Jews for their pretended loyalty to the state by branding them all as traitors."<sup>4</sup> When the enraged mob shouted: "Away with him! Away with him! Crucify him!" he seized on this cry to hammer into the consciousness and memory of the masses the fact that the death sentence about to be pronounced was at their own express demand and consequently their own responsibility. "Shall I crucify your king?" he asked them. But the hierarchs too kept to their role and parried the thrust with the significant reply: "We have no king but Cæsar" (John 19:15).

Only now did Pilate announce the punishment for the crime already verified by him. In the provinces of the empire the *crimen læsæ maiestatis* was normally punished with crucifixion. The mode of death had to be specified by name in a Roman court. In condemning to the death of the cross the sentence usually ran: *Ibis in crucem* (Thou shalt mount the cross).<sup>5</sup>

Admittedly the evangelists do not say explicitly that Pilate pronounced a formal sentence of death. Many scholars have concluded for this reason that his decision was not the pronouncement of a sentence in the technical sense but was either an order to execute and a recognition of the Sanhedrin's sentence,<sup>6</sup> or even a totally irregular surrender of the Accused to the Jews.<sup>7</sup> The last-

<sup>4</sup> AICHER, *op. cit.*, p. 51.

<sup>5</sup> Petronius *Sat.* 137. 9: *Ibis in crucem*; Plautus *Mostell.* iii. 2. 63 (§ 850): *Abin hinc in malam crucem*.

<sup>6</sup> The authors mentioned *above* pp. 11 f., belong to this latter category.

<sup>7</sup> Above all ROSADI, *op. cit.*, p. 220: "'Shall I crucify your king?' This was the

named theory is definitely incorrect, for it rests on the hypothesis that all the essential judicial moves in the trial were necessarily recorded with exactitude in the gospels. But such a supposition implies a complete failure to recognize the peculiar character of the gospels which are primarily concerned, not to produce a detailed report, but to show the significance of the events for the salvation of mankind. One cannot rely even upon Josephus for this, because though he records numerous executions, and not always merely by the way,<sup>8</sup> he hardly ever mentions the wording of a sentence or even the fact that a formal sentence was pronounced. It would be just as wrongheaded to conclude, however, that these were executions without sentence, as it would be to draw such a conclusion from the lack of any explicit mention of a death sentence in the gospel reports of Pilate's trial of Jesus. If the last words of Pilate had really consisted, as Rosadi maintains, in the question "Shall I crucify your king?," then both the carrying out of the crucifixion by Roman soldiery and the announcement, in the inscription on the cross, of the charge on which Jesus had been convicted, would surely be incomprehensible. The fact that Pilate carried the proceedings to a conclusion emerges forcibly from both these circumstances. But the theory, that Pilate as

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judge's last word. . . . Not a word more, not the slightest effort to justify a decision which was nothing more than a concession. The evangelists only report that he released Barabbas and delivered Jesus up." The Italian advocate Antonio QUARTULLI presents the following interpretation in his study, "Il profilo giuridico della tragedia de Gesù" (published in 1937 in the review *Eloquenza*, but known to the present writer only through MANASSERO, *op. cit.*, pp. 281-287): The trial by Pilate ended with the acquittal of Jesus, whereupon a stormy argument developed between the judge and the populace, which ended by the former giving way to the insistence of the masses and delivering Jesus to their will without announcing a death sentence. Cf. also R. GUTZWILLER, *Jesus der Messias* (1949), p. 318: "Pilatus überlässt Jesus den Juden, das heisst, er lässt die Juden machen, gibt ihnen die Freiheit, ihr Urteil zu vollstrecken" (yet on p. 321, GUTZWILLER speaks of a condemnation by Pilate); J. MICHL, "Der Tod Jesu," *MThZ*, 1 (1950,2), 5-15, esp. p. 8: "Pilatus hatte es in der Hand, Jesus zum Tod zu verurteilen oder freizulassen; er hat, genau gesehen, weder das eine noch das andere getan, jedoch Jesus, wie es scheint, ohne eigentlichen Schuldspruch, dem Willen des Synedriums und des versammelten Volkes zur Kreuzigung überlassen." Cf. DANIEL-ROPS, *op. cit.*, pp. 524-527.

<sup>8</sup> Some examples p. 223, n. 15 above.

a routine administrative proceeding had examined the Jewish sentence and finished by merely ordering its execution, is likewise untenable. True, it seems at first glance to be corroborated by the expression which all the gospels use in their accounts of the final decision of Pilate: "He delivered Jesus to be crucified." To the word "delivered" John adds the dative object "to them," i.e., to the Jews, while Luke adds "to their will" (Mark 15:15; Matt. 27:26; John 19:16; Luke 23:25). As the further narrative of the passion shows, it was not the Jews, but Roman soldiers, who carried out the execution. The "delivering" is therefore meant, not in the concrete but in the figurative sense, as Luke makes clear by his addition. The expression "he delivered" underlines the fact that by his decision Pilate has given in to the demand of the Jewish accusers. Hence that expression does not provide us with any information as to whether the decision of Pilate constituted a confirmation of the Jewish judges' verdict or an independent sentence. It is also possible that this expression was used by the evangelists because it is used in the LXX text of Isaiah 53:6, 12 of the sufferings and death of the Just Servant of God. The early Christians do not seem to have been interested in whether the decision of the Roman governor was a legal sentence or not, but they took a great interest in the fact that his decision was the fulfillment of an Old Testament prophecy. Actually, however, there are indications to be found that Pilate did really pass a legal sentence. The reports of Josephus and Tacitus, and the allusion to the Roman death sentence in Luke 24:20<sup>9</sup> can be best interpreted in this sense, though they do not suffice in themselves to solve the question. On the other hand, the statement in St. John's Gospel to the effect that Pilate pronounced his decision from the judgment seat offers a firm clue to go on (19:13). Death sentences had to be pronounced from the judgment seat, whereas all other sentences and ordinances could be given *de plano*.<sup>10</sup> It is unthinkable that Pilate

<sup>9</sup> See pp. 28-34 *above* and pp. 276 f. *below*.

<sup>10</sup> T. MOMMSEN, *Römisches Strafrecht* (1899), p. 447.

should have mounted the judgment seat if he had only to confirm the Jewish sentence and order its execution.<sup>11</sup>

All the gospels make it evident that he only gave his decision after a bitter struggle with the Jewish accusers. According to John 19:12, the Jews' serious threat that they would denounce him to the emperor was the deciding factor. Such being his mood, nothing can have been farther from the mind of the Roman than to add solemnity to the decision thus forced from him by pronouncing it ceremoniously. *If* he mounted the judgment seat, he did so solely because this was essential to the proceedings; in other words, because he had a death sentence to pass. And the fact *that* he mounted it is testified, not only by the clear statement in John's Gospel but also by a remark in Matthew's. For since it is reported that the procurator had sat upon the judgment seat during the trial (Matt. 27:19), it is quite unthinkable that he should have made the final pronouncement *de plano*. Besides, the ground for conviction with which the trial by Pilate ends is a different one from that on which the Jewish sentence had been based. In the Sanhedrin trial Jesus had been found guilty of the crime of blasphemy. The crime which formed the subject of the hearing by the Roman court, and of which Jesus was likewise finally declared guilty, was the political crime of high treason. Pilate opens the hearing with the question: "Art thou the king of the Jews?" (all four evangelists). He does not ask: "Art thou the Messias, the Son of God?" as the charge would have run if he had only had to examine the Jewish sentence. Luke amplifies the meaning of the new charge (23:2). In the summing up which Pilate pronounces at the close of the proceedings, he calls the Accused the "king of the Jews" (John 19:14). But this political ground for conviction is testified most clearly of all in the inscription on the cross, which all four evangelists mention. Hence, whereas the Sanhedrin trial was concerned solely with a religious crime, the

<sup>11</sup> Thus, W. VON AMMON, "Das Strafverfahren gegen Jesus von Nazareth," *Nachrichten der Evang.-Luth. Kirche in Bayern*, 8 (1953), 72. According to DANIEL-ROPS, *op. cit.*, p. 524, Pilate only ascended the tribunal "to assert his prestige."

Roman judge was concerned from beginning to end with ascertaining the existence of a political crime. The divergence between the two charges is not eliminated by the fact that both can be traced back to one and the same origin: the claim of Jesus to be the Messiah. That the title of Messiah had a political content also has its significance in that it had given the Jews a convenient pretext for bringing a charge before Pilate, but the proceedings before Pilate would have been unlikely to turn out differently and the relation of the two trials to each other could definitely not have been assessed differently if the Sanhedrin had condemned Jesus, not on the ground of His messianic self-testimony, but on that of some other allegedly blasphemous utterance (for instance, for blasphemous use of the name of God). But if the charge in the Roman trial was an essentially different one from that in the Jewish trial, then the decision of the procurator cannot have been the confirmation, as an administrative measure, of the Jewish death sentence which had already been passed, but must have been an independent verdict, arrived at by means of a fresh trial carried out according to Roman law.

This view is shared by more recent authors, who have examined the trial of Jesus in the light of the history of ancient law, for instance, by Robert Besnier, Professor of the History of Jurisprudence at the Sorbonne, and Leopold Wenger, the famous expert on ancient law.<sup>12</sup>

Hence, the words "He delivered Him to be crucified" (Mark 15:15) are to be understood as describing the death sentence. If the evangelists had been interested in the legal side of the case

<sup>12</sup> R. BESNIER, "Le procès du Christ," *RHDr*, 18 (1950), 191-209, esp. 202 f.; L. WENGER, *Die Quellen des römischen Rechts* (1953), pp. 287 f.; p. 287, n. 11: "Dass das Verfahren vor Pilatus formell nicht bloss Bestätigung des Urteils der Juden war, sondern mit einem von ihm gesprochenen Todesurteil endete, ist auch bestritten worden, aber nach einem römischen Strafverfahren bei allen Konzessionen, die man der schwankend-schwächlichen Haltung des Pilatus machen muss, doch nicht zu bezweifeln." The evangelists' terms are inexact, to be sure, but "wenn sie übereinstimmend den Ausdruck *παρέδωκεν* gebrauchen, so kann darin nur ein Urteilsspruch gesehen werden" (*ibid.*). Likewise MANASSERO, *op. cit.*, pp. 335 f. For more detailed treatment of the whole question see BLINZLER, *op. cit.*, pp. 171-184.

they would have written: "He condemned him to the death of the cross," or in direct speech: "He announced: *Ibis in crucem*."

The sentence was legal forthwith and did not require the confirmation of the emperor. An appeal to the emperor against the verdict of one of his representatives was possible in theory, it is true, but in practice this possibility was excluded from the outset in many cases, and presumably also in the case of Jesus, by delegation of authority to the local rulers, a practice meant primarily to relieve the imperial court.<sup>13</sup> The time of execution of the sentence was fixed by the judge at his free discretion. [As a rule, sentences were executed immediately after they had been announced,<sup>14</sup> and in the provinces exceptions doubtless were rare. In the case of Jesus, Pilate probably considered postponement unpracticable in view of the threatening attitude of the Jews. The law, decreed on a resolution of the senate in the year 21 A.D., that a minimum period of ten days should elapse between announcement and execution of a death sentence, did not apply to the governors' courts but only to death sentences passed by the senate itself.<sup>15</sup>

When an execution was decreed, the governor ordered an officer or soldiers to take the condemned person away. The execution squad to whom Jesus was given over consisted of four soldiers (John 19:23) under the command of a centurion. As the procurators did not have any legions under them, but only auxiliary troops, the soldiers in question can only have been members of an auxiliary cohort. The auxiliary troops of the procurators of Judea were recruited from among the non-Jewish inhabitants of Palestine, that is to say, they were mainly Syrians and Samaritans and for the most part bitter enemies of the Jews.

After the trial of Jesus, Pilate probably proceeded straightway

<sup>13</sup> *Dig.* 49, 2, 1, 4: Interdum Imperator ita solet iudicem dare, ne liceret ab eo provocare; MOMMSEN, *op. cit.*, pp. 276, 468.

<sup>14</sup> Tacitus *Ann.* iii. 51; xiv. 64; cf. *Codex* 9, 4, 5: De his, quos tenet carcer, id aperta definitione sancimus, ut aut convictos velox poena subducatur, aut liberandos custodia diuturna non maceret.

<sup>15</sup> Tacitus *Ann.* iii. 51; Suetonius *Tiberius* 75.

to try the two "thieves" who were crucified together with Jesus. As the trial of Jesus had begun early in the morning, it is unlikely that their trial had taken place before it on Good Friday. Naturally it is possible, but not probable, that they had been tried the day before, because in this case they would probably have been executed the same day, in accordance with Roman criminal practice.

The soldiers now gave Jesus back His own clothes (Mark 15:20)<sup>16</sup> instead of the purple cloak which He had been wearing since the mocking (John 19:2). Normally those condemned to be crucified were led naked to the place of execution, as they were scourged on the way there while carrying the plank.<sup>17</sup> This custom was not adhered to in Jesus' case, probably because He had been scourged before. Or perhaps conducting a delinquent naked through the town was a practice avoided completely in Judea,<sup>18</sup> as it was indecent in Jewish eyes. It is not mentioned that the crown of thorns was removed, hence the belief prevalent in the second and third centuries that Jesus died with the crown of thorns on His head.<sup>19</sup> But apparently it was removed, like the other regalia of mockery, before the journey to the place of execution.<sup>20</sup> Pilate had only tolerated the buffoonery because he had

<sup>16</sup> John does not mention that the purple garment was taken off, but implies it in 19:23.

<sup>17</sup> Valerius Max. i. 7. 4: . . . verberibus mulctatus sub furca ad supplicium. Dionysius of Halicarnassus 7. 69 (1479): "They accompanied him, beating his naked body with scourges." Cf. the episode related by Josephus *Antiquities* xix. 4. 5. § 270: Chærea and Lupus, the murderers of Caligula, were stripped before being taken to the place of execution; when Lupus complained of the cold, his accomplice asked him angrily whether the wolf should not freeze too (lupus = wolf).

<sup>18</sup> U. HOLZMEISTER, *Historia ætatis NT* (2nd ed., 1938), p. 107. assumes such a *privilegium Iudaicum* to have been granted. He refers to *Antiquities* xx. 6. 3. § 136, in which it is told that tribune Celer was led through the whole city of Jerusalem and so exposed to public view, but there is no mention of his having been stripped.

<sup>19</sup> The sources are assembled by INNITZER, *op. cit.*, pp. 271-273. Some MSS (D c, similarly syrcur) mention in Luke 23:37 that the soldiers mocking the crucified Jesus also set a crown of thorns on His head. This is an echo of Mark 15:17 (Matt. 27:29; John 19:2): Luke passed over the mocking by the Roman soldiers; the interpolation was inserted at too late a point, namely, where Luke's Gospel mentions the Roman soldiers for the first time in the passion narrative.

<sup>20</sup> K. KASTNER, for example, inclines to the opposite assumption, *Jesus vor*

hoped that through it the case of the Accused might take a more favorable turn (John 19:4), but that hope was now past. Besides, Roman soldiery were definitely not allowed to mock the Jews publicly. The scourging which always preceded the Roman crucifixion was not carried out in Jesus' case because He had already suffered this punishment.<sup>21</sup> If it had been repeated it would doubtless have resulted in His death; but the Jews were extremely anxious that He should breathe His last on the cross as "Accursed of God."

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*Pilatus* (1912), pp. 61 f.; also U. HOLZMEISTER, *ZkTh*, 39 (1915), 351. But the tradition of the second-century Church (Gospel of Nicodemus, Tertullian, Origen) is obviously without historical foundation, and the exegetical argument that the gospels explicitly mention the removal of the purple garment but not of the crown of thorns and that this must therefore have been left on Jesus, is worthless. The removal of the reed is not mentioned either, yet obviously Jesus did not have it in His hand either on the Way of the Cross or on the cross.

<sup>21</sup> REGNAULT, *op. cit.*, pp. 184 f., assumes a double scourging: the first being mentioned in John and Luke and the second in Mark and Matthew. But the narratives do not demand this supposition. See Excursus XI.

## 14. THE CRUCIFIXION

EVEN THE mere word, cross, must remain far not only from the lips of the citizens of Rome, but also from their thoughts, their eyes, their ears," Rome's most famous orator, Marcus Tullius Cicero, had once exclaimed.<sup>1</sup> Even the ancients were at one in their belief that crucifixion was one of the most frightful punishments that human cruelty had ever thought up. Elsewhere Cicero calls it "the most cruel and frightful sentence"; Tacitus speaks of the "slavish death penalty," and Josephus of "the most wretched of all ways of dying."<sup>2</sup>

The sinister distinction of having invented this form of execution or at least of having first practiced it on a large scale, apparently belongs to the Persians.<sup>3</sup> Perhaps they used this method of killing because the earth, being consecrated to Ormuzd, should not be defiled by the body of one executed. Later the cross, as instrument of execution, is to be found under Alexander the Great, among the Diadochian rulers and above all among the Carthaginians—but in Greece itself it seems never to have been used. From Carthage, crucifixion became known to the Romans, who inflicted it on those convicted of grave crimes, such as runaway slaves and rebels.<sup>4</sup> In the Roman provinces crucifixion was one of the most important means of maintaining order and security, and the history of the turbulent province of Judea in par-

<sup>1</sup> Cicero *Pro Rabirio* v. 16: *Nomen ipsum crucis absit non modo a corpore civium Romanorum, sed etiam a cogitatione, oculis, auribus.*

<sup>2</sup> Cicero *In Verrem* ii. 5. 64. 165: . . . *crudelissimi tæterrimique supplicii*; Tacitus *Hist.* iv. 11: *servili supplicio expiavit*; cf. ii. 72. Josephus *Jewish War* vii. 6. 4. § 203.

<sup>3</sup> Herodotus i. 128; iii. 132.159.125. Thucydides i. 110. 3.

<sup>4</sup> Livy 23. 35; 30. 43.

ticular contains numerous accounts of crucifixions. The crucifixion of two thousand Jews at one time by Quintilius Varus has already been mentioned. About the year 46 A.D. the procurator, Tiberius Alexander, a renegade Jew and nephew of Philo, the celebrated philosopher, crucified James and Simon, the two sons of the insurgent leader, Judas the Galilean.<sup>5</sup> About 52 A.D., Ummidius Quadratus, governor of Syria, caused all the rebels taken prisoner by the procurator, Cumanus, in Samaria, to be crucified.<sup>6</sup> Josephus tells us that rebels whom the procurator, Felix, condemned to be crucified during his term of office, from 52 to 60 A.D.,<sup>7</sup> were countless. Gessius Florus, the last procurator of Judea (64 to 66 A.D.), inflicted this punishment even on Roman knights of Jewish origin.<sup>8</sup> During the siege of Jerusalem five hundred or more Jewish prisoners were crucified daily in every possible position in front of the town, until at last wood for the crosses, and space in which to set them up, ran short.<sup>9</sup> It was not permissible to inflict this ignominious death upon Roman citizens,<sup>10</sup> but again and again, particularly at the time of the decline of the Empire, autocratic governors ignored this prohibition. This is shown by the example of Gessius Florus, or the still more famous case of the notorious Verres who, when governor of Sicily, executed a Roman citizen at a spot by the Straits of Messina from which he could see the coast of Italy, in order to show him in the most drastic manner how little his Roman citizenship availed him.

Crucifixion was unknown in Jewish criminal law. The hanging on a gibbet, which was prescribed by Jewish law for idolaters and blasphemers who had been stoned, was not a death penalty, but an additional punishment after death designed to brand the executed person as one accursed of God, in accordance with Deut. 21:23 (LXX): "For he is accursed of God that hangeth on a tree."

<sup>5</sup> *Antiquities* xx. 5. 2. § 102.

<sup>6</sup> *Jewish War* ii. 12. 6. § 241.

<sup>7</sup> *Jewish War* ii. 13. 2. § 253; *Antiquities* xx. 8. 5. § 161.

<sup>8</sup> *Jewish War* ii. 14. 9. § 308.

<sup>9</sup> *Jewish War* v. 11. 1. § 451.

<sup>10</sup> Cicero *In Verrem* ii. 5. 62, 162 ff.

The Jews applied these words also to one who had been crucified. If crucifixion was the most shameful and degrading death penalty even in the eyes of the pagan world, the Jews in the time of Jesus regarded a person so executed as being, over and above, accursed of God. This particular religious idea must be borne in mind if we are to understand why the Jews demanded precisely death by crucifixion for Jesus. How the first Christians surmounted the scandal of the Messiah dying as one accursed of God is shown by Paul in his Epistle to the Galatians (3:13).

Crucifixion was carried out in various ways, according to circumstances and doubtless also according to the humor of the executioners,<sup>11</sup> but the very prevalent belief that the condemned person was fastened to the ready-made cross (whether lying on the ground or firmly set up), is certainly incorrect. The normal procedure, and the one presumably followed with Jesus too, was this: the condemned person was stripped, and after having been scourged—this had been done in advance in the case of Jesus—his outstretched arms were nailed, as he lay on the ground, to the crossbeam which he himself had been forced to carry to the place of execution.<sup>12</sup> The crossbeam was then lifted up with the body on it and fastened to the vertical post already firmly erected, to which the feet were now nailed. A block of wood fixed about midway up the gibbet supported the hanging body; the old accounts make no mention of a support for the feet.<sup>13</sup> The cross

<sup>11</sup> See Excursus XII.

<sup>12</sup> Artemidorus *Oneir.* 2. 56: "He who is nailed to the cross first carries it (out)." That the condemned person did not carry the whole cross, but only the transverse beam, is clear from the well-attested fact that the upright beam of the cross was usually (or at least frequently) already permanently embedded in the place of execution, and also from the fact that sometimes there was a terminological distinction made between the *patibulum* which the condemned person had to carry and the cross to which he was subsequently fastened, although quite often the obviously synecdochical expression "carry the cross" occurs. For documentation, see U. HOLZMEISTER, *Crux Domini atque crucifixio* (1934), pp. 17 f. Cf. T. MOMMSEN, *Römisches Strafrecht* (1899), p. 920, and H. F. HIRTZIG, "Crux," PWR, IV, 1730.

<sup>13</sup> For the use of the *sedile* or block cf. H. FULDA, *Das Kreuz und die Kreuzigung* (1878), pp. 151 f. From the fact that Jesus died quickly, he assumes that this support was not used in His case (212 f.), but he is quite wrong there, for Jesus

thus formed by the post and the transverse beam was either the shape of a T (*crux commissa*) or of a † (*crux immissa*). The height of the cross varied. Generally it was not much higher, when erected, than a man, so that the feet of the crucified person almost touched the ground. Under Caligula and Domitian the death of a notorious robber who had been killed by wild beasts was represented in the amphitheatre by someone hanging on a real cross being torn to pieces by a bear.<sup>14</sup> One of Nero's eccentric pastimes consisted of enveloping himself in the pelt of a wild beast and, disguised in this garb, attacking and cruelly ill-treating crucified persons.<sup>15</sup> In both cases the cross used must have been low. But a high cross was often used for some particular reason—for instance, to guard against death being hurried by wild beasts, or to ensure that the delinquent was seen for as wide a radius as possible. Thus Cæsar Galba, when in Spain, had a murderer who had claimed exemption on the ground of his Roman citizenship, crucified on a particularly high cross painted white to make it more conspicuous.<sup>16</sup> The cross of Jesus must also have been higher than the normal cross, because the soldier reached him the sponge soaked in vinegar not by hand but on a reed (Mark 15:36). One can therefore take it that the feet were at least a yard above the ground. This fact also explains the scornful shouts of the chief priests, "Let the Christ, the King of Israel, *come down* now from the cross!" (Mark 15:32). When we are told that the centurion stood *facing* Him (Mark 15:39), that does not say that the Crucified and the officer were on a level, but the words do in fact indicate that we must not think of the cross as being so very

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could not have lived three hours without this support. Cf. HOLZMEISTER, *op. cit.*, p. 9, and R. SCHMITTEIN, *Umstände und Ursache von Jesu Tod* (1951), p. 26. The block is definitely attested to by Justin Martyr *Dial.* 91. 2, Irenaeus *Haer.* ii. 24. 4, and Tertullian *Ad nat.* 1. 12; *Adv. Marc.* 3. 18. Cf. also INNITZER, *op. cit.*, pp. 264 f. There is no evidence for the *suppedaneum* prior to the third century, cf. P. W. SCHMIDT, *op. cit.*, pp. 393 f.

<sup>14</sup> Martial *Epigrammaton* 7.

<sup>15</sup> Suetonius *Nero* 29. 1.

<sup>16</sup> Suetonius *Galba* 9.

X high, because if it were, one would expect the captain to be described as standing *under* it. In any case, Jesus really was "lifted up," as He had foretold.<sup>17</sup> Whether the tree of the cross rose above the crossbeam, as the fathers of the Church as a whole assume it did, cannot be determined with certainty. The inscription indicating the reason for execution, which was fastened above His head (Matt. 26:37), could also have been affixed to the middle of the crossbeam, if this were laid across the top of the tree, as the head of the Crucified naturally was lower than His arms.

The condemned person was sometimes fastened to the cross with cords and sometimes with nails. That Jesus was nailed, at least by the hands, emerges from the accounts of the Resurrection, according to which Jesus showed the apostles the marks of the nails in His hands. Apparently the feet also were nailed, each one separately, moreover.<sup>18</sup> The physical torture was greater when nails were used, but as a rule it was less protracted because the greater loss of blood hastened death. When crucified persons died only after several days according to some ancient accounts, these must certainly have been bound to the cross with cords. The time it took to die naturally depended on the physical constitution of the condemned as well as on the manner of affixing to the cross. Hanging for several hours on the cross could of itself cause such a state of exhaustion that the delinquent would be beyond recovery even if taken down alive. One day, during the siege of Jerusalem, Josephus had to leave the Roman troops just as a great number of Jewish prisoners were brought in and forthwith crucified. Only on his return in the evening of that day did he discover that three of his friends were among the victims. He went straight to Titus and begged him to spare them. Titus allowed him to have them taken down from the cross but despite medical attention only one of the three survived.<sup>19</sup> Apparently they also had been nailed and not merely tied to the cross. When it was desired

<sup>17</sup> John 3:14; 8:28; 12:32-34.

<sup>18</sup> See Excursus XII.

<sup>19</sup> Josephus *Vita* 75. § 420 f.

for some reason to hasten the death of a crucified person, his limbs were beaten with an iron club (*crurifragium*).<sup>20</sup>

On the way to the place of execution a tablet on which was written the *causa pœnæ*, the reason for condemnation, was hung on the delinquent or carried before him.<sup>21</sup> During the reign of Marcus Aurelius a Christian named Attalus was led round the amphitheatre in Lyons with a tablet attached to him on which was written:

HIC EST ATTALUS CHRISTIANUS.<sup>22</sup>

So his guilt consisted in confessing himself a Christian. When anyone was crucified, the tablet was displayed on the cross after the execution.

The events between the condemnation and the death of Jesus, insofar as they affect the assessment of the trial, emerge as follows from the gospel narratives and the relevant extrabiblical sources:

Jesus was conducted by the execution squad from the prætorium, i.e., from the former palace of Herod, together with two other condemned men, to the place of execution. According to Jewish and Roman custom, executions took place outside the inhabited area of a town.<sup>23</sup> The place where Jesus was crucified lay outside but close to the city walls (John 19:20) and was called Golgotha, i.e., a skull, which meant no doubt a place the shape of a skull—a round, bare hill of rock. Most archeologists are of the opinion that this place lies near the present Church of the Holy Sepulchre.<sup>24</sup> True, this location is not beyond all doubt but it is

<sup>20</sup> Origen *In Matt.* 140 (PG 13, 1794 B). *Evangelium Petri* 4:14.

<sup>21</sup> Suetonius *Caligula* 32; *Domitian* 10.

<sup>22</sup> Eusebius HE v. 1. 44.

<sup>23</sup> Lev. 24:14; Num. 15:35 f.; 3 Kings 21:13; Acts 7:58; Plautus *Miles glor.* ii. 4. 6 f. (§ 359 f.): Tibi esse pereundum extra portam disspensis manibus patibulum quom habebis.

<sup>24</sup> F. M. ABEL, *Syrie-Palestine* (1932), p. 575; H. VINCENT, *L'authenticité des Lieux Saints* (1932), pp. 54-92; H. LESETRE, "Calvary," *DictB*, II, 77-78; C. PERRELLA, *I Luoghi Santi* (1936), pp. 345-393; G. DALMAN, *Jerusalem und sein Gelände* (1930), p. 73; A. E. MADER, "Calvary" *LThK*, V, 759 f.; O. EISSFELDT, "Golgotha," *RGG*, II (2nd ed.), 1306; Joachim JEREMIAS, "Wo lag Golgotha und das Heilige Grab?" *Angelos*, 1 (1925), 161-173; *idem*, "Golgotha und der heilige Fels," *Angelos*, 2 (1926), 74-128. Cf. J.-M. VOSTÉ, *De passione et morte lesu*

the most probable one. In the time of Jesus the place lay outside the northern or so-called "second" wall, an area which was only incorporated into the city proper after the third city wall had been built by Herod Agrippa. It was to there that Jesus was to carry His cross, or rather, the crossbeam of His cross. And He did in fact carry it for a short distance. But soon the soldiers forced a man who was just coming home from the fields, one Simon of Cyrene, to take the burden off Jesus and carry it to the place of execution (Mark 15:21).<sup>25</sup> It is clear from this that Jesus was too much weakened by the scourging He had suffered earlier to drag the plank Himself. As Luke alone records (23:27-31), many inhabitants of the town, and in particular many compassionate women, joined the procession. According to Talmudic tradition,<sup>26</sup> respected women of Jerusalem used to give a narcotic drink to those condemned to death in order that they would feel their torments less; in this humane custom they were observing the injunction of the Old Testament: "Give strong drink to them that are sad: and wine to them that are grieved in mind" (Prov. 31:6). A narcotic drink, wine mixed with myrrh,<sup>27</sup> was offered to Jesus

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*Christi* (1937), pp. 295-297; GOGUEL, *op. cit.*, pp. 454-458; J. SCHMID, *Das Evangelium nach Markus* (3rd ed., 1954), pp. 297-301.

<sup>25</sup> John 19:17 says that Jesus Himself had carried His cross. Only the synoptics mention Simon's carrying it (Mark 15:21; Matt. 27:32; Luke 23:26). According to G. WOHLBERG, *Das Evangelium des Markus* (3rd ed., 1930), p. 373, n. 54, "the normal harmonizing is unimpeachable." The remark that Simon of Cyrene, when he chanced on the procession, was "coming from the country," could be an indication that the procession was already near the city gate at that moment. Matt. 27:32 says "Now as they went out," which one could complete as either "of the praetorium" or "of the city." The expression used by Luke, "to bear it after Jesus" can hardly mean that Simon carried the cross together with Jesus (as C. F. SAVIO, *op. cit.*, p. 11, would have it). No, Simon, walking behind the Lord, carried the cross alone. The three falls in the Stations of the Cross devotion are legendary; see INNITZER on this point, *op. cit.*, pp. 246-249.

<sup>26</sup> *Sanh.* 43a; BILLERBECK, I, 1037. Elsewhere too this custom appears to have been practiced, cf. for instance Tertullian *De jejuniis* 12: On the morning of his condemnation his friends gave a young catechumen prisoner spiced wine. At his trial he was so drunk that he was unable to answer when asked to confess what Lord he served.

<sup>27</sup> Mark 15:23. Instead of wine mixed with myrrh Matthew speaks of a "wine mixed with gall," doubtless in order to indicate that this incident fulfilled in part the text Ps. 68:22 (LXX); "And they gave me gall for my food." The

too when He arrived at Golgotha, presumably by Jewish women and not by the Roman soldiers for it was, as we have seen, a Jewish custom—but He refused it (Mark 15:23); He wished to endure with full consciousness the tortures which lay before Him (cf. also Mark 14:25).

Before being nailed on, He was stripped of His garments. Artemidorus vouches for the fact that those who died on the cross were naked.<sup>28</sup> Whether Jesus was allowed a loin-cloth is uncertain; such a thing is first mentioned in the Gospel of Nicodemus. According to Jewish ideas, it would not be proper to execute a person completely naked in public. Men condemned to be stoned wore a simple modesty cloth hung in front.<sup>29</sup> It is possible that the Roman soldiers, since they allowed the narcotic drink, considered Jewish feelings in this matter also.

The cross on which Jesus was raised up stood between the crosses of the two thieves (Mark 15:27; John 19:18). According to the Mishna laws, it was not permissible to execute two criminals on the one day,<sup>30</sup> but even if this law were binding on the Jews of that time, it definitely did not apply to the Romans. There is nothing to support the popular belief that the two thieves were not nailed but bound to their crosses.<sup>31</sup> The fact that they survived

Greek word *χαλκή* means, in the LXX, either gall, or poison, or wormwood (as in Prov. 5:4; Lam. 3:15). Since Matt. uses this word to describe the myrrh of his source, Mark, one may assume that the latter is actually meant. Myrrh wine is mentioned by Pliny *Hist. nat.* 14. 13. Dioscorides, 1. 69, speaks of the intoxicating properties of myrrh. According to the Talmud the narcotic draught consisted of wine mixed with incense (see previous note). Apparently it was made up of various ingredients.

<sup>28</sup> Artemidorus *Oneir.* 2. 61.

<sup>29</sup> Mishna *Sanh.* VI 3; women were given a fairly large cloth to cover them both back and front.

<sup>30</sup> Mishna *Sanh.* VI 4.

<sup>31</sup> According to Tertullian *Adv. Marc.* 3. 19. This view seems to have originated in the fact that the two robbers are referred to by Luke 23:39 not as crucified but as "hanged," cf. J. SCHMID, *Das Evangelium nach Markus* (2nd ed., 1951), p. 281. Regarding this mode of expression cf. Acts 5:30; 10:39; Josephus *Jewish War* vii. 6. 4. § 202. Occasionally, as in Sedulius, ca. 450, one finds the view that the robbers were nailed on, see C. WEYMAN, "Un problème d'archéologie en sujet de la Passion," BALAC, 2 (1911), 42 f. SAVIO, *op. cit.*, p. 17, concludes—mistakenly

longer than Jesus only proves that they were of more robust health than Jesus, who may have been "weak and thin like all rabbis,"<sup>82</sup> and at any rate had lived a life full of exceptional privations and exertions.<sup>83</sup>

The tablet attached to the cross bore, in black or red letters on a white ground, the inscription: Jesus of Nazareth, the King of the Jews (John 19:19).<sup>84</sup> In order that it might be understood by as many people as possible, the inscription was written in three languages, Aramaic, Latin and Greek (John 19:20) and read as follows:

IESCHUA' NAZORAJA MALKA DIJEHUDAJE  
IESUS NAZARENUS REX IUDÆORUM

ΙΗΣΟΥΣ Ο ΝΑΖΩΡΑΙΟΣ ΤΩΝ ΙΟΥΔΑΙΩΝ

At that time there were three languages spoken in Palestine, pretty much as there are today. Aramaic was the language of the country people, Latin was that of the ruling foreign power, and Greek was the common language, the *lingua franca*, of the whole Empire. Edicts of the Romans, written in Greek and Latin, are frequently mentioned by Josephus. There exist to this day in the —from the fact that the soldiers began the *crucifigium* with the robbers, that these, unlike Jesus, were not nailed.

<sup>82</sup> KLAUSNER, *op. cit.*, p. 487; similarly C. F. NESBITT, "An Inquiry into the Physical Health of Jesus," JR, 22 (1942), 302-312, who also refers to the great prevalence of malaria in the low-lying parts of the valley of the Jordan and about Tibérias, and who thinks it is not impossible that Jesus had this disease. The view of P. REINE, *Jesus* (1930), pp. 243 f., is certainly quite the reverse. <sup>83</sup> One has only to think of the forty days' fast, the nights spent in prayer, the irregular and insufficient meals in a life of ceaseless activity (Mark 3:20; 6:31), <sup>84</sup> The gospels vary somewhat in the wording. Mark 15:26: "The King of the Jews"; Matt. 27:37: "This is Jesus, the King of the Jews"; Luke 23:38: "This is the King of the Jews"; John 19:19: "Jesus of Nazareth, the King of the Jews." Cf. P. F. RECARD, "Le titre de la croix," RArch, 28 (1928), 95-105. The contesting of the historicity of the inscription on the cross is one of the wilder aberrations of criticism (W. BOUSSSET, *Kyrios Christos* [1913], p. 56; R. BULTMANN, *Geschichte der synoptischen Tradition* [2nd ed., 1931], pp. 393 f.). It is opposed by numerous scholars including W. BRANDT, *Die evangelische Geschichte und der Ursprung des Christentums* (1893), p. 202; Ed. MEYER, I, 193; MONTFLORE, *op. cit.*, p. 381, and M. DIBELIUS, *Jesus* (1933), p. 81 ("The earliest communites knew eye-witnesses of the Crucifixion and we can therefore trust the information that the crime of Jesus was placarded").

neighborhood of Rome gravestones with inscriptions in the three languages in which the inscription on the cross was written.<sup>35</sup> The text of the inscription on the cross was the work of Pilate, who wished to annoy the Jews by his malicious wording of the reason for condemnation. The latter did in fact take immediate offense. The chief priests came to the procurator to persuade him to change the inscription "The King of the Jews" to "He said, I am the King of the Jews," but this time the Roman did not give in to them. Saying calmly ὁ γέγραφα γέγραφα (What I have written, I have written), he sent the petitioners about their business (John 19:21 f.).

After the crucifixion the execution squad remained on guard on the spot (Matt. 27:36). According to ancient custom, the executioners had the right to what was left by the executed person.<sup>36</sup> Accordingly, the four soldiers shared the clothing of Jesus between them. It probably consisted of an under and an outer garment, a belt, sandals, and possibly a head covering. The under garment, the shirt-like *chiton*, possibly made by the mother of Jesus, was seamless and woven in one piece, and so the soldiers drew lots for it as they could not cut it into four pieces (Mark 15:24; John 19:23 f.). All the evangelists mention that the soldiers (or one of them), on a call from Jesus, soaked a sponge in *poska*, wine vinegar diluted with water, the usual refreshing drink of laborers and soldiers,<sup>37</sup> and reached it up to the mouth of the Crucified on the

<sup>35</sup> Cf. Th. HOPFNER, *Die Judenfrage bei Griechen und Römern* (1943), p. 30.

<sup>36</sup> Cf. Dig. 48, 20 (De bonis damnatorum), 6: Pannicularia sunt ea, quae in custodiam receptus secum attulit, spolia, quibus indutus est, quum quis ad supplicium ducitur, ut et ipsa appellatio ostendit; ita neque speculatores ultro sibi vindicent, neque optiones ea desiderent, quibus spoliatur, quo momento quis punitus est.

<sup>37</sup> Mark 15:36; Matt. 27:48 f.; Luke 23:36 f.; John 19:29. Many regard this act of the soldiers as a particularly cruel one and the drink as a horrible torturing draught, especially J. PICKL, *Messias König Jesus* (1935), pp. 147-154, and TPQ, 87 (1934), 721-731, but the gospels do not give us to understand this. True, they all describe the drink as "vinegar," ὄξος, but that does not in the least justify our thinking of it as "corrosive torture vinegar." Vinegar, that is to say, vinegar of wine, is already mentioned in the Old Testament as a refreshing drink (Num. 6:3; Ruth 2:14); in the Midrash commentary on Ruth 2:14 we read: "It is the custom of harvesters to dip their bread in vinegar" (BILLERBECK, II,

end of a reed or shaft.<sup>38</sup>

A large crowd attended the crucifixion, as all the reports indicate. Part of it, particularly members of the Sanhedrin, indulged in heartless, mocking remarks about the helpless Messiah hanging on the cross. In these, scornful allusions were made to the words of Jesus concerning the Temple, which had been quoted at the trial. "Aha!" they cried, "thou who destroyest the Temple and in three days buildest it up again, come down from the cross and save thyself!" (Mark 15:29 f.). According to Luke, the soldiers too, and one of the criminals crucified with Him (both of them according to Mark) took part in this mockery (Luke 23:36 f., 39; Mark 15:32). According to the synoptic tradition, several women from Galilee, disciples of Jesus, looked on from a distance at the happenings on Golgotha (Mark 15:40 f.); but the Fourth Evangelist records that three or four women, among them the Mother of Jesus and her sister, and also the Beloved Disciple, stood right beside the cross (John 19:25-27). It is reasonable to assume that these persons at first looked on at the frightful drama from a distance, but later came up to the cross. The soldiers had no reason

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264); we also know this drink from the Greek and Roman profane literature (see BAUER'S German-Greek Dictionary, 1044). The fact that the reaching up of the sponge was accompanied by the ribald remarks of the soldiery is no proof, either, that a cruel torture was meant. According to Mark 15:36 the soldier who reached up the drink said: "Wait, let us see whether Elias is coming to take him down." M.-J. LAGRANGE, *The Gospel of Jesus Christ* (1943), II, 272, is probably right when he connects the answer with the effort of the other soldiers to stop giving him the drink. "The good fellow dared not show even this kindness without joining in the raillery of the others" (*Idem*, *L'Évangile selon S. Marc* [1947], p. 435). Cf. P. KETTER, "Ist Jesus auf Golgotha mit Galle und Essig getränkt worden?" *Pastor Bonus*, 38 (1927), 183-194; C. RÖSCH, "Num Christus in Golgotha felle et aceto potatus sit," *CollF*, 2 (1932), 101-104. Th. HEPPNER, "Eine moderne Hypothese und—eine neue Apokryphe?" *ThG*, 18 (1926), 657-671, opposes the hypothesis that the sponge contained mortally poisonous Morion wine. Apparently the drink had the purpose of keeping the person being executed conscious for as long as possible, according to R. C. FULLER, "The Drink Offered to Christ at Calvary," *Scrip*, 2 (1947), 114 f.

<sup>38</sup> Mark 15:36 = Matt. 27:48: "reed"; John 19:29: "a stalk of hyssop." L. FONCK, *Streitzüge durch die biblische Flora* (1900), identifies the biblical hyssop with the *Origanum Maru* L., which has a woody stem over a yard long. But the old conjecture that the word in question was originally not ὑσσώπῳ but ὕσσῳ in John and referred to a javelin (*pilum*) is not impossible.

to prevent this little group of relatives and friends from coming nearer when the crucifixion had already been accomplished and death was imminent. With the exception of the Beloved Disciple, the apostles and disciples of Jesus had not come to Golgotha. To be sure, Luke records (23:49) that "all his acquaintances" were present. These words are not a report, however, but an allusion to two verses in the Psalms<sup>39</sup> and must be understood as purporting to show, in the presence of the women and the Beloved Disciple, fulfillment of the Old Testament words.

The demeanor of Jesus during His death agony is not described by the evangelists. It is only indicated in their accounts of the last utterances of the Crucified. Here three forms of narration are to be distinguished.

According to the Mark-Matthew tradition Jesus cried out in a loud voice immediately before His passing, those shattering words from Psalm 21 (22) "*Eloi, Eloi, lama sabachthani*—My God, my God, why hast thou forsaken me?" Then, in the moment of death, an inarticulate cry broke from Him (Mark 15:34, 37).

Luke transmits three utterances of Jesus as He hung on the cross: the prayer for His enemies while or immediately after He was raised up on the cross: "Father, forgive them, for they do not know what they are doing"; the promise to the converted malefactor: "Amen I say to thee, this day thou shalt be with me in paradise"; and the dying cry: "Father, into thy hands I commend my spirit" (Luke 23:34, 43, 46).

The Fourth Evangelist recounts three further utterances of Jesus. According to him, Jesus commended His Mother and the Beloved Disciple one to the other with the words: "Woman, behold, thy son," and "Behold, thy mother." Later, when He was in His last agony, He asked for a drink: "I thirst"; and after the sponge soaked in *poska* had been reached up to Him, immediately

<sup>39</sup> Ps. 38 (37):12; 88 (87):9; cf. J. SCHMID, *Das Evangelium nach Lukas* (2nd ed., 1951), p. 283; in disagreement with P. KETTER, "Zur Ehrenrettung der Männer auf Golgotha," TPQ, 84 (1931), 746-758, who would like to make out that "all His acquaintances" were the apostles.

Luke was  
conf. last  
Jesus  
sings

before He died, He cried out: "It is consummated!" (John 19:26 f., 28, 30).

Traditional exegesis places all these recorded utterances of the Crucified one after another and so arrives at the Seven Last Words of Jesus on the Cross. So much at least is clear: that Jesus was fully conscious to the last moment and that the thoughts of the dying Redeemer were with His heavenly Father.

In the ninth hour, that is, soon after three o'clock, Jesus died.<sup>40</sup>

The gospel reports give no information as to the medical cause of death. Many commentators attribute it to something which caused the laws of nature to break down. Belser, for instance, believed that by an act of His divine power Jesus had rent His heart and so verified His words that He would lay down His life by His own power (John 10:17 f.).<sup>41</sup> The main fact put forward in support of this view is that immediately before His death Jesus uttered a loud cry. Even the fathers of the Church regarded this cry as a miracle and as proof of the voluntary nature of Jesus' dying.<sup>42</sup> Others object that there is nothing unusual in people crying out once more immediately before dying<sup>43</sup> and that there is nothing to prove conclusively that this is not also true of persons dying on the cross.

At any rate, medical science cannot be denied the right to seek in natural phenomena the cause of the death of Jesus. The Eng-

<sup>40</sup> Mark 15:34, 37; see Excursus XIII.

<sup>41</sup> BELSER, *op. cit.*, p. 423, who refers to John 10:17 f.; U. HOLZMEISTER, ZkTh, 39 (1915), disagrees with him.

<sup>42</sup> Cf. A. M. JANOTTA, "Quum Jesus Christus 'emissa voce magna expiravit,' sese vere Deum esse ostendit," DT, 36 (1933), 265-273. This view appears to be based upon a later form of the text Mark 15:39. There are three versions: *a*. When the centurion saw "him thus expiring" S.B sa; *b*. "him expiring with a cry," WΘ syrsin; *c*. "how he had thus cried and expired" A C it (D). The interpretation which regards the last cry of Jesus as miraculous is based on the versions *b*. and *c*. But apparently none of these versions is the original one. Reading *a*. could at a stretch be understood as a generalization of *b*. and *c*. But apparently *a*. is the oldest text, in which case *b*. and *c*. are a clearer rendering of same (according to Matt. 27:50).

<sup>43</sup> M.-J. LAGRANGE, *L'Évangile selon s. Marc* (1947), p. 436.

lish doctor and Jesuit, Ryland Whitaker,<sup>44</sup> considers the possibility of heart failure, congestion of blood, suffocation, rupture of the heart or of the aorta; but according to the latest findings the two last-named possibilities must be eliminated. The Prague doctor, Rudolf W. Hynek, who has gone into this question in connection with his examination of the so-called "Holy Shroud of Turin," believes that the main cause must be ascribed to the failure of His breathing and the hindrance of the circulation as a result of oedema of the lungs.<sup>45</sup> But according to the experiments of Hermann Mödder, Medical Superintendent of the St. Francis Hospital, Cologne, there can be no question of oedema of the lungs. He maintains, on the contrary, that the hanging position had caused an "orthostatic collapse" which inevitably had to result in death because its cause, which was the crucifixion, was not removed; the heart and the vital centers of the brain inevitably failed through stoppage of circulation. Mödder points out that the subjects of his experimental observations were unable to utter a loud cry in the last moments before collapse, and he therefore holds that the last cry of Jesus has no natural explanation.<sup>46</sup> Continuing Mödder's expositions, Heinz Zimmermann comes to the conclusion that the severe curtailment of coronary circulation in consequence of orthostatic collapse must be regarded as the real and final cause of death on the cross; hence it was the failure of circulation to the heart and not to the brain which caused the death of Jesus, and this accounts for the fact that He retained consciousness to His last breath. Hence, besides the other sufferings of that agonizing death, the dying Saviour had to endure the special existential fear and feeling of annihilation which patients with severe coronary disturbances are known to suffer.<sup>47</sup> According to Engelbert Sons, the failure of the heart, which is

<sup>44</sup> R. WHITAKER, "The Physical Cause of the Death of Our Lord," *The Catholic Medical Guardian*, 13 (1935), 83-91.

<sup>45</sup> R. W. HYNEK, *Golgotha* (1936), pp. 146-181.

<sup>46</sup> H. MÖDDER, "Die Todesursache bei der Kreuzigung," *StZ*, 144 (1949), 50-59; *idem*, "Der leidende Christus," *KDA*, 1 (1950), 12-17.

<sup>47</sup> H. ZIMMERMANN, "Der Tod am Kreuz," *Hochland*, 41 (1949), 614-616.

the organ most severely affected in orthostatic collapse, is the primary cause of death on the cross. The central nervous system continues functioning undisturbed to the last. A gush from the pleural cavity following a stoppage explains the outflow of blood and water at the piercing with the lance.<sup>48</sup> Raymond Schmittlein,<sup>49</sup> on the other hand, believes that the death of Jesus must be attributed to traumatic shock, and actually this view has much to commend it. It does not seem, however, that the medical aspect of the death of Jesus has yet been finally explained.<sup>50</sup> The experi-

<sup>48</sup> E. SONS, "Die Todesursache bei der Kreuzigung," StZ, 146 (1950), 60-64.

<sup>49</sup> *Umstände und Ursache von Jesu Tod* (1951). On p. 89 the following views are put forward: 1. The lack of a severe injury which normally would have caused death, is characteristic of shock; 2. The person suffering from shock remains conscious to the end; 3. The death struggle is very brief; 4. Internal hemorrhage and the presence of oedema fluid is established in all autopsies of shock cases.

<sup>50</sup> In the last century rupture of the heart due to mental suffering was most often regarded as the immediate cause of death. Cf. the authors named in J. LANGEN, *Die letzten Lebenstage Jesu* (1864), p. 347, and the objections raised against their diagnoses. The same idea recurs in F. BÜCHSEL, *Jesus* (1947), p. 113: "Dass Jesus mehr an der seelischen als an der körperlichen Erschöpfung gestorben wäre, würde zu dem, was die Evangelien sonst noch von seinem Sterben berichten, passen." Also worthy of mention are the expert medical opinions in P. W. SCHMIDT, *Geschichte Jesu*, II (1904), 409-414 (suffocation as the final cause of death); L. D. MASON, "The Death of Christ from a Physician's Standpoint," *Bible Student and Teacher*, 6 (1908), 447-451; E. M. MERRINS, "Did Jesus Die of a Broken Heart?" Bs, 62 (1905), 38-53, 229-244 (the answer is in the negative); A. R. SIMPSON, "The Broken Heart of Jesus," *Expositor*, 8 (1911), 311-321 (rupture of the heart with discharge of blood into the pericardium); N. W. SHARPE, "The Physical Cause of Our Lord's Death," Bs, 87 (1930), 423-452 (the death of Jesus is declared to be a wonder in view of John 19:34). Contrary views are expressed by W. SOUTHERLAND, "The Cause of Our Lord's Death," *ibid.*, pp. 476-485, and G. L. YOUNG, *ibid.*, 88 (1931), 197-206. There is a thorough examination of the question, based on medical opinion, in INNITZER, *op. cit.*, pp. 297 f. (physical and mental inanition and exhaustion). Regarding John 19:34, cf., further, A. WIKENHAUSER, *Das Evangelium nach Johannes* (1948), p. 276. The curious view that crucifixion was not fatal in its effect is represented by O. STREFFE, *Physiologische Unmöglichkeit des Todes Christi am Kreuze* (1912); S. LINDE, *Der vermeintliche Opfertod Jesu im Lichte der Evangelien* (1916); and A. R. DARD, *Die Ohnmachttheorie im Leben Christi* (1925). No less difficult to follow is K. BERNA, *Das fünfte Evangelium* (1954), who seeks to prove from the so-called "Holy Shroud of Turin" that Jesus was wrapped in the shroud "with His heart still beating in His body," in which connection see J. BLINZLER, "Ist Jesus am Kreuze gestorben?" *Glaube und Leben*, 10 (1954), 562, 576. A clarification of the medical side of the death of Jesus is more hindered than helped on the whole by drawing the Holy Shroud of Turin into the discussion,

ments on which theories have been based hitherto have naturally been most inadequate; the corpse of a crucified person has never yet been the subject of an autopsy.

Even if the rapid death and last death cry of Jesus were not miraculous in the strict sense, nevertheless there was something extraordinary about them. For normally, as we know from ancient records, crucified persons went through a long period of complete exhaustion and unconsciousness before dying. In another way too the dying of Jesus was unique. The screams of rage and pain, the wild curses and the outbreaks of nameless despair of the unhappy victims, which made crucifixions so particularly horrifying, were completely absent in this case. Instead of cursing His executioners, Jesus besought Heaven to forgive them; instead of throwing Himself into the arms of despair, He fled in prayer to the arms of God. Even the words from Psalm 21 which He uttered were not merely "the anguished cry of human nature in the extreme of torture, which asks why such frightful suffering should be necessary" (Sickenberger), but, as the basic theme of the Psalm shows, an expression of innermost oneness with God.<sup>51</sup>

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as does for instance P. BARBET, *Die Passion Jesu Christi in der Sicht des Chirurgen* (1953). See the comments on same of H. HAAG, *Schweizer Kirchenzeitung*, 122 (1954), 152 f., and J. BLINZLER, *Christl. Sonntag*, 6 (1954), 46. For fairly recent discussion cf. also J. DE BARTOLOMÉ RELIMPIO, *Estudio médico-legal de la pasión de Jesu Cristo* (Madrid, 3rd ed., 1949); W. B. PRIMROSE, "A Surgeon Looks at the Crucifixion," *HJ*, 47 (1949), 382-388; E. GIUDICI, "Considerazioni medicobiologiche sulla passione di Cristo," *SC*, 78 (1950), 144-151; S. MARIGO, "Fisiopatologia della crocifissione," *Humanitas*, 6 (1951), 127-137; S. GISDER, "Considerações sobre a 'causa mortis' de N. S. Jesus Cristo," *Voces de Petropolis*, 9 (1951), 260-285; J. L. CAMERON, "How Our Lord Died," *IER*, 65 (1951), 232-242; F. LA CAVA, *La passione e la morte di N. S. Gesù Cristo illustrate dalla scienza medica* (1953), which was not available to the present author.

<sup>51</sup> J. SICKENBERGER, *Leben Jesu* (1932), § 260. Cf., on the other hand, A. JÜLICHER, "Die Religion Jesu und die Anfänge des Christentums," *KG*, I, 4 (1906) 50: "Scheinbar ein Schrei verzweifelter Anklage, in Wahrheit ein den Umständen entsprechendes Gebetswort, denn Jesus wird den ganzen Psalm 22, der so anhebt, aber mit dem Bekenntnis festen Gottvertrauens schliesst, zum Trost in seinen Schmerzen sich vorgehalten haben." Similarly O. HOLTZMANN, *Leben Jesu* (1901), p. 384; J. E. CARPENTER, *The First Three Gospels* (4th ed., 1906), p. 393, and F. SMITH, "The Strangest Word of Jesus," *ExpT*, 44 (1931/2), 259-261. Cf. also K. BORNHÄUSER, *Das Wirken des Christus durch Taten und Worte* (2nd ed., 1924), pp. 203-222; W. HASENZAHN, *Die Gottverlassenheit des Christus*

This unique dying—to which Matthew and Luke explicitly attribute the extraordinary happenings in nature which accompanied it: the darkening of the sun and the earthquake (Matt. 27:54; Luke 23:47)—made such an overpowering impression on the Roman centurion, who superintended the crucifixion, and, standing facing the Crucified, could follow each stage exactly, that he exclaimed: “Truly this man was the Son of God!” (Mark 15:39).<sup>52</sup> To be sure, one need not take this utterance for a perfect confession of Christianity. The conception of a metaphysical Son of God was surely far from the pagan centurion’s mind, and the messianic title “Son of God” can hardly have been known to him either. He had only heard of the claim of Jesus to be the Son of God—for as we know, the title had played a leading part in the Jewish trial, and had been mentioned at least incidentally in the Roman trial, and, finally, had been bandied about by the mockers under the cross. And now the pagan officer sees in the extraordinary death agony of Jesus the confirmation that His amazing self-testimony was, after all, credible.

The utterance of the centurion under the cross constitutes the first verdict on the trial of Jesus by a disinterested party. It was a solemn declaration of the innocence of the Crucified and, as such, a solemn indictment of His judges.

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(1937), and W. F. LOFTHOUSE, “The Cry of Dereliction,” *ExpT*, 53 (1942), 188–192. MONTEFIORE, *op. cit.*, p. 387, and J. WEISS, *Die drei älteren Evangelien* (4th ed., 1929), pp. 219 f., take it that this cry of Jesus was only an imaginative echo of the loud cry with which He expired. But pious imagination would surely never have put *those* words into the mouth of the dying Christ.

<sup>52</sup> Likewise Matt. 27:54; on the other hand Luke 23:47: “Truly this was a just man.” On which see G. D. KILPATRICK, “A Theme of the Lucan Passion Story and Luke XXIII, 47.” *JThSt*, 43 (1942), 34–36. Cf. also C. MANN, “The Centurion at the Cross,” *ExpT*, 20 (1908/9), 563 f.

## EXCURSUS XII

*The Archeology of the Crucifixion*

THE ANCIENT penalty of crucifixion has already been examined in numerous detailed monographs; cf. the more recent literature, H. LECLERCO's "Croix et Crucifix," DAL, III (1914), 3045-3131, esp. I: "Le supplice de la croix," coll. 3045-3048; U. HOLZMEISTER, *Crux Domini atque crucifixio* (1934); J. J. COLLINS, "The Archeology of the Crucifixion," CBQ, I (1939), 154-159; INNITZER, *op. cit.*, pp. 259-268; P. CALIGARIS, "La crocefissione," *Paideia*, 7 (1952), 218-222. But it must be admitted that the gospels, even when we supplement them from other ancient accounts of the penalty of crucifixion, do not give a completely clear picture of the procedure. In his well-known work, *Das Kreuz und die Kreuzigung* (1878), the Protestant Pastor, H. FULDA, represented the view that Jesus died on a simple post. "The hands were nailed upward onto the post . . . the knees were sharply bent and the soles of the feet were laid flat against the plank and bound fast to it with cords and short sticks" (p. 221). Jesus and/or Simon had carried this plain post to Golgotha (p. 200). P. W. SCHMIDT, *Geschichte Jesu*, II (1904), 386-391, shares this view. It would be demolished at once if it were proved that the wall cross of Herculaneum and the Rotas Opera form on the square flagstone found in Pompeii were undoubtedly of Christian origin, which is admittedly much disputed, cf. G. DE JERPHANION, OCP, 7 (1941), 5-35; F. FOCKE, *Würzburger Jahrbuch* (1948), pp. 366-401. The representation of the crucifixion on the portal of the Church of St. Sabina in Rome (fifth century), the celebrated ivory bas-relief in the British Museum (early fifth century), and even the mock crucifix of the Palatine (third century), known since 1856, are all of too late a date to be a source of authentic information for us. C. F. SAVIO, in *Come fu crocefisso il Redentore* (1936), arrives at conclusions different from HOLZMEISTER's. He believes he can show that there was a kind of scaffold on the place of execution with a fixed transverse beam of considerable length. The crucifixion was carried out by fastening the condemned to the post which he himself had carried to the place of execution, and then fastening this post upright to the scaffold. The hands were then fastened to the transverse plank and the feet were nailed to the upright post. The two malefactors were executed on the same scaffold, hence they were right beside Jesus, but they had only been tied, not nailed on. Savio finds his theory confirmed by the representation of the crucifixion in St. Sabina's Church, Rome. Some of his objections to HOLZMEISTER's theories are perhaps deserving of attention even if definitely not unanswerable. There seem to be several grounds for rejecting the *patibulum* envisaged by HOLZMEISTER: 1. The transverse beam alone

was not so heavy as to make the collapse of Jesus on the way of the cross *easily* understandable. 2. For the journey to the place of execution the transverse beam was usually bound to the arms of the condemned, but the evangelists tell us nothing of the loosening of Jesus when Simon took over the beam. 3. Normally the victims were naked, but Jesus went to Golgotha in His own clothing. 4. The original meaning of the word *στυγός* is upright post. Points 1. to 3. lose their force, however, when we reflect that Jesus, *contrary to the normal rule*, was scourged, not on arrival at the place of execution but beforehand. And as for point 4., it must be remarked that the word *στυγός* could also apply to the patibulum alone (see p. 248, no. 12).

Another question which has not been fully cleared up concerns the method of attaching the condemned person to the cross. There is not much proof from antiquity concerning nailing to the cross, cf. J. W. HEWITT, "The Use of Nails in the Crucifixion," HThR, 25 (1932), 29-45. Moreover, the statements of the early church writers are open to the suspicion of having their origin in Ps. 21:17 f. (LXX) (cf. Justin Martyr *Apology* i. 35. 7; *Dialogue* 97. 3 f.; Tertullian *Adversus Marcionem* 3. 19.); or possibly in Ps. 118: 120 (cf. Barn. 5:13). (In Barn. 7:9 it is mentioned that the Jews "pierced" Jesus at—or before—the crucifixion, this being placed on a parallel with the ritual of the Day of Atonement described in Lev. 16:21 f.; while the "piercing" here apparently refers to the nailing, Apoc. 1:7 is to be understood as referring to the piercing with the lance, as in John 19:34-37.) But John 20:25, where the nails are expressly mentioned, does not in fact serve to prove the fulfillment of prophecy. As the presence of wound marks is indicated moreover in Luke 24:39 (see E. KLOSTERMANN, *Das Lukás-Evangelium* [2nd ed., 1929], p. 240), it does not seem permissible to doubt that Jesus was nailed. Paul too testifies to this indirectly, when he speaks of "the blood of His cross" (Col. 1:20). Ignatius of Antioch mentions the nailing of Jesus incidentally without reference either to John's gospel or to a verse of a Psalm (*Smyrn.* i. 2; cf. i. 1). The question as to whether the feet as well as the hands were nailed was much discussed in the past century, sometimes with passion. The rationalists denied it in the interest of the trance hypothesis. The pros and cons have been perhaps best marshaled by David Friedrich STRAUSS in his *Leben Jesu*, II (1836), 531 f. As contra arguments he reckons: 1. Psalm 21:17 (LXX), which should seem to the pragmatical evangelists so applicable if the feet had been nailed, is nowhere quoted (FULDA, *op. cit.*, p. 293, one of the most passionate contestants of the nailing of the feet, later based his arguments mainly on this); 2. in the story of the Resurrection, while the wounds in the hands and side are mentioned, wounds in the feet are not thought of (John 20:20, 25, 27). As arguments pro he reckons: 1. Luke 24:39, Jesus invites the disciples: "See my hands and my feet!" True, it is not stated here that the feet have been pierced, but it is difficult to understand why Jesus should refer particularly to His feet in order to convince them of the reality of His body as a whole. It is therefore not a question of reality

but above all of identity. 2. Justin Martyr and Tertullian, both of whom lived before Constantine and could have observed crucifixions for themselves, maintain that the feet of Jesus were nailed. 3. Plautus *Mostellaria* ii. 1. 12 f. (§ 360), testifies that the simple nailing of the four limbs was the normal procedure in crucifixions. The passage reads: *Ego dabo ei talentum, primus qui in crucem excucurrerit: sed ea lege, ut offigantur bis pedes, bis brachia*. The crucifixion referred to here is exceptionally severe in method, each foot and hand being nailed *twice* (FULDA, *op. cit.*, p. 272, makes use of the somewhat unconvincing conjecture that *offigantur* should read *offringantur*). So one must regard the view of STRAUSS that the feet of Jesus were also nailed as being the more likely one. The separate nailing of each foot is implied indirectly in the Plautus text insofar as the nailing of the feet is made fully parallel with the nailing of the hands, and also from the fact that the other procedure is very difficult, and finally, from the fact that the later representations of the three-nail cross obviously have their origin in symbolical considerations. In this connection compare J. BLINZLER, *Das Turiner Grablinnen und die Wissenschaft* (1952), pp. 30, 53; J. J. COLLINS, "The Crucifixion of Our Lord and Some Medical Data," *CBQ*, 12 (1950), 171 f., particularly 171. Irenæus says in *Against the Heresies* ii. 24. 4., that Jesus was nailed to the cross with five nails. However the fifth nail is to be explained, this excludes the possibility of one single nail being used for the feet. Compare also R. J. HESBERT, *Le problème de la transfixion du Christ dans les traditions biblique, patristique, iconographique, liturgique et musicale* (1940), which was not accessible to the present writer.

## EXCURSUS XIII

*The Hours of Good Friday*

THE PASSION narrative of Mark's Gospel contains six indications of time:

14:68 "cockcrow": the denial of Peter

15:1 "early": close of the Sanhedrin sitting and leading of Jesus to Pilate

15:25 "the third hour": the crucifixion

15:33 "the sixth hour": beginning of the darkness

15:34 "the ninth hour": end of the darkness and exclamation of Jesus

15:42 "late": beginning of the entombment

It is worthy of note that a good three hours elapse between each of these times. For the morning cockcrow is presumably toward three o'clock (Friedrich HAUCK, *Das Evangelium des Markus* [1931], p. 180); "early" is daybreak, i.e., normally six o'clock; the third, sixth and ninth hours are, to be exact, nine o'clock, midday and three in the afternoon, and "late" usually means the early evening, that is to say, getting toward six o'clock. It is obvious that here we have an artificial chronological plan; real life

does not fall into evenly measured periods of time. One might think, perhaps, that Mark reckoned, not in hours but in quarters of a day; for we know that exact measurement of time was hardly possible to the ancients (cf. H. LAMER, *Wörterbuch der Antike* [2nd ed., 1933], pp. 829-832). In that case, the third hour, for instance, would mean the whole quarter of the day, from nine until 12:00 noon (as many commentators hold, most recently K. PIEPER, *Heimat und Leben unseres Herrn Jesus Christus* [1949], p. 191, and RICCIOTTI, *op. cit.*, pp. 635 f.). But measuring time in quarters of a day by the naming of one single hour cannot be supported with documentary proof. The parable in Matt. 20:1-16 has also been cited in this connection, but quite wrongly, as the reference to the eleventh hour proves. The last lot of men worked only *one* hour (20:12). The eleventh hour, in which they started work, is therefore five in the evening. The other hours given are to be understood in a corresponding sense. In Mark it is no different. It is quite obvious that in 15:33 he is reckoning, not in quarters of a day, but in real hours. It is surely clear that he does not mean that the darkness began between twelve and three, and ended between three and six. No, what he meant is this: the darkness began at the hour when the sun stood at its zenith (cf. Amos 8:9) and ended three hours later, therefore it lasted from about midday until three o'clock. But if the times referred to in 15:33 are single hours—and that is not normally doubted (cf. the most recent commentator on the subject, J. SCHMID, *Das Evangelium nach Markus* [3rd ed., 1954] p. 302)—then, to be consistent, one must reckon the third hour to be 9 o'clock. In view of the impression of artificial construction which Mark's time plan gives, many commentators are of the opinion that the evangelist was not in a position to give reliable particulars in terms of hours of the sequence of events on Good Friday. Before one can form an opinion on this, the chronological references in John must be elucidated.

In John's passion narrative three times are given. According to 18:27, Peter denied his Master at cockcrow; in 18:28 Jesus was taken to Pilate "early"; in 19:14 it was "about the sixth hour" that Pilate delivered his verdict. The two first-named particulars correspond exactly with those of Mark. The agreement between Mark 15:1 and John 18:28 is particularly worthy of note; it would appear from this that Mark is passing on a well-founded tradition. On the other hand, John 19:14 and Mark 15:25 are plainly unreconcilable. According to Mark, Jesus was *crucified* at 9 o'clock whereas according to John he was only *condemned* by Pilate at about 12 o'clock. Even if we take into consideration the fact that John only gives an approximate time, the two particulars cannot be reduced to a common denominator. The old hypothesis that the third hour was originally named by John too and changed to the sixth by a writing error (a confusion of similar letters), is not a satisfying solution. In view of Mark 15:25, this error would hardly have persisted so long as to penetrate into almost all the manuscripts of John (the few manuscripts which show the third hour in John's Gospel have definitely been corrected to correspond with Mark).

The view that John reckoned the hours from midnight onward (for example, J. BELSER, *Geschichte des Leidens und Sterbens* etc. [2nd ed., 1913], pp. 381, 388 f., and B. KRAFT, *Der Sinn der heiligen Schrift* [1947], p. 17) falls down on the fact that the Fourth Evangelist, like the synoptics, uses the Jewish manner of reckoning time from sunrise to sunset (4:52; 11:9; 1:40; 4:6). Besides, this view would oblige one to place the trial by Pilate improbably early (at latest before 5 o'clock, but more likely before 4), and the crucifixion improbably late (three hours after announcement of the sentence).

In deciding in favor of one of the two versions, a factor which weighs strongly against Mark is that his information occurs within the framework of an obviously artificial time plan. A similar time plan is not detectable in John. It is to be assumed, however, that John knew Mark's Gospel; if he altered the time given by Mark, then one may reasonably suppose that he did so because he had better, or what he believed to be better, information to hand down. To be sure, the critics regard the text in John as not above suspicion either, but the theory that the later hour in John is due to the evangelist's having taken account of the many conversations between Jesus and Pilate reported by him but not by Mark (BICKERMANN, *op. cit.*, p. 230) is definitely untenable. Others assume that John made out Jesus to be condemned in the sixth hour solely because he wanted to achieve a certain symbolism: Jesus was to die at the same hour at which the paschal lambs were being slaughtered in the Temple (see for example R. BULTMANN, *Das Evangelium des Johannes* [1941], p. 514, n. 5). But one can reasonably doubt the correctness of this conjecture. It has been pointed out already that the paschal lamb symbolism definitely does not stand out prominently in John (cf. Excursus I). If John had really wished to express this symbolism in 19:14, then it would have been more sensible for him to have given the time, not in the report of the condemnation but in the report of the *crucifixion* (19:18-23). One must therefore hold firmly to John 19:14 and take that text seriously despite modern criticism and also despite Mark 15:25. The fact that John is relying upon sound tradition here is also vouched for by the circumstance that, unlike the synoptics, he is in a position to give in the same context the Semitic and the Greek name of the place where Jesus was condemned (19:13).

If John 19:14 is trustworthy, how then is Mark's different time to be explained? Is it conceivable that Mark placed the crucifixion at the third hour only in keeping with his time plan and without any clue to go on? If he was unacquainted with any tradition regarding the hour of the crucifixion, why then did he not simply leave the hour unspecified? It has often been pointed out that Mark 15:25 stands out remarkably and singularly when considered within the framework of Mark's Gospel, which otherwise pays so very little attention to the chronological sequence of events (cf. G. BERTRAM, *Die Leidensgeschichte Jesu und der Christuskult* [1922], p. 76). But the verse is also remarkable from another angle, in the first place because it mentions the fact of the crucifixion for a second

time. The narrator has just announced, in v. 24, "Then they crucified him" and has already gone on to another incident, namely, the sharing out of the garments after the actual crucifixion. Then, to our surprise, we read once more: "Now it was the third hour and they crucified him." The Western version, "Now it was the third hour and they kept watch over him" is certainly secondary (contrary to the opinion of E. KLOSTERMANN, *Das Markus-Evangelium* [3rd ed., 1936], p. 164). Obviously, it is designed to do away with the duplication and is modeled on Matt. 27:36, and in any case an indication of the time (not the duration) of the watching would be thoroughly odd. The suggestion to make Mark 15:25 refer to the parceling out of the clothing, and to translate the text "Now it was the third hour *since* they *had* crucified him" is rendered difficult by two grammatical irregularities; and besides, it would not be in harmony with Mark 15:33 f., where the times indicated undoubtedly follow the ordered sequence of the hours of the day. Hence, the second reference to the crucifixion in v. 25 is a repetition of v. 24. To be sure, this repetition ceases to be surprising if one understands the "and" in the way which is actually obvious, namely, as meaning "when" (BAUER's *Dictionary*, p. 711). But the *place* in which this information is given still strikes one as odd. The hour ought to have been given where the crucifixion was reported, namely, in v. 24. In the place where it occurs now it gives the impression of being a remark inserted afterward. Add to this the important observation that the verse has no parallel either in Matthew or in Luke. Why should these two evangelists have left out the sentence if they had found it already given in Mark? Was the third hour already objected to by them? (This question is posed by E. KLOSTERMANN, *Das Matthäus-Evangelium* [1938], p. 223). But if so, why did they object to it? Had they also the feeling that the information had been inserted belatedly and in the wrong place? But if that were the case, why did neither of them put it in a more suitable place in their own gospels? It is sometimes surmised that Matthew and Luke had left out this hour of Mark's as being superfluous (cf. for instance J. SCHMID, *Matthäus und Lukas* [1930], p. 162). But even this reason is not really very illuminating either. Both Matthew and Luke have taken over *all* Mark's indications of time in their narratives of the passion. Why, then, do they—and each of them, moreover, independently of the other each time—consider it superfluous to fix an hour for the *climax* of the story of the passion? It is impossible to answer this question. The lack of a parallel in Matthew and Luke to this verse of Mark can be satisfactorily explained *only* by the conjecture that the two evangelists did not find the verse in the copy of Mark used by them. The author of the Gospel of Peter also, who obviously knew and used the canonical Gospel of Mark (A. HARNACK, *Bruchstücke des Evangeliums und der Apokalypse des Petrus* [2nd ed., 1893], pp. 32 f.), gives no indication of the hour of the crucifixion (4:10), but he does mention that the darkness began at midday (5:15) and ended at the ninth hour (6:22). Hence, there are a whole lot of reasons for the hypothesis that Mark 15:25 was inserted by a reviser. This hypothesis is

also approved by commentators who are indubitably free of harmonizing intentions, for instance J. WEISS, *Das älteste Evangelium* (1903), p. 335, and C. G. MONTEFIORE, *The Synoptic Gospels*, I (2nd ed., 1927), p. 381; cf. also F. HAUCK, *Das Evangelium des Markus* (1931), p. 186. Admittedly, conjectures concerning texts are always somewhat problematical, but one would be giving way to a false positiveness if one assumed that the unanimous testimony of the manuscripts absolutely guarantees the original text. "We know today that our texts of the gospels have not been so safely handed down as was assumed in the days of WESTCOTT-HORT and for several decades after them, and that particularly in the very earliest ages these were treated with very great carelessness" (J. SCHMID, "Markus und der aramäische Matthäus," *Synoptische Studien* [Festive volume in honor of Alfred Wikenhauser], [1953], p. 160).

As soon, however, as one reads Mark's Gospel omitting 15:25, the other chronological data take on a different aspect. For then the three-hour time plan no longer appears to be used throughout, and one can no longer speak of an artificially contrived chronological blueprint. The times offered may have only an approximate value but they have come to the evangelist somehow or other through traditional channels. Mark has not noted the time of the crucifixion explicitly, but he has nevertheless put it on record indirectly, it would seem, namely, in 15:33. True, the commencement of the darkness is not brought into direct relation with the hour of the crucifixion. The evangelist does not say that the darkness only began when Jesus was already hanging on the cross for some time; neither does he state explicitly that it began the same moment that the crucifixion began. But it seems, nevertheless, that Mark, or the tradition which he passes down, wishes to circumscribe, in 15:33, the time which Jesus spent on the cross: While the Saviour was hanging in agony on the cross awaiting death, God's creation was enveloped in the dark garb of mourning (for this symbolism, cf. BILLERBECK, I, 1042). If this interpretation is correct, then Mark bears testimony to Jesus having been crucified about midday on Golgotha.

The considerations which moved the creator of the interpolation 15:25 can easily be imagined. In Mark he missed an explicit indication of the time at which the most important or at least the most painful event of the passion, namely, the nailing on of Jesus and the erection of the cross, took place. Following on v. 24, in which the fact of the crucifixion is stated, he made good what he believed to be an oversight. As he had no special tradition at his disposal, he had to establish the hour of the crucifixion on his own responsibility. He chose the third hour because in this way an apparently consistent and chronologically uninterrupted report resulted.

The death of Jesus must have occurred shortly after three o'clock. This is indicated in Mark 15:34-37, and it also emerges from the reports concerning the happenings between the death and the burial. The day following Good Friday was the Sabbath. In the Jewish liturgy the Sabbath was reckoned from sunset to sunset. As the councilor, Joseph of Arimathea, certainly took great care not to commit a breach of the Sabbath rest, it can

be taken as definite that the burial of Jesus was already over by sunset, that is, about six o'clock in the evening. The indication "late" at the beginning of the account of the burial, Mark 15:42, is to be interpreted either as an anticipated calculation of the time for the burial itself or else as being equivalent to "late in the afternoon" (as the addition "When the sun had set" in Mark 1:32 indicates, the word "late" alone does not necessarily mean evening in our sense; this is still more clearly seen by a comparison of Matt. 14:15 and Matt. 14:23). That Mark places the preparations for the burial *before* sunset is proved in 15:42 by the addition "as it was the Day of Preparation, that is, the eve of the Sabbath." Hence the councilor, Joseph of Arimathea, actually completed the burial on Good Friday itself. All the work entailed in the burial probably required at least two hours. Hence, the death of Jesus cannot have taken place later than four o'clock. According to this, Pilate's surprise that Jesus was already dead (Mark 15:44 f.) is understandable.

On this point the Fourth Gospel and the synoptics agree. Moreover, anyone reading John without an eye on Mark will gain the impression from the passage John 19:31-42 that Jesus died at least two hours before sunset. On the other hand, John's Gospel especially excludes the assumption that a considerable time elapsed between the death and the burial, because according to John 19:42, Joseph and Nicodemus had to hurry in order to complete their arrangements before nightfall.

Hence, the most probable chronological sequence of the events of Good Friday is as follows: During the night of Thursday, about 3 o'clock, Peter's denial and the trial of Jesus by the Sanhedrin; toward daybreak, that is, about 6 o'clock, close of the Sanhedrin session and delivery of Jesus to the court of the Roman governor; presumably some time before midday, announcement of the sentence by Pilate; about or more probably somewhat after midday, erection of the cross on Golgotha; shortly after 3 o'clock, death of Jesus immediately followed by commencement of the burial preparations by Joseph of Arimathea; evening toward 6 o'clock, completion of the burial.

## 15. THE TRIAL OF JESUS IN THE NEW TESTAMENT OUTSIDE OF THE PASSION NARRATIVES

THE PICTURE of the capital trial of Jesus, as drawn in the foregoing chapters, rests mainly on the passion narratives of the gospels, but the tragic events of Good Friday are also touched upon in several other parts of the New Testament. Before passing a final judgment on the trial, it is advisable to utilize these scattered allusions, that is, to examine them in order to ascertain whether they confirm and supplement the picture already drawn, or possibly throw new light on it here and there. This task consists in answering the following three questions:

- I. What references to the trial of Jesus do the gospels contain outside of the passion narratives?
- II. How was the trial referred to in the preaching of the apostles and the earliest disciples?
- III. What was the Apostle Paul's judgment on the trial?

### I. The Trial of Jesus in the Gospels Outside the Passion Narratives

It emerges with complete certainty from the gospels, which contain some absolutely indubitable testimony of certain utterances of the Lord in this sense, that Jesus foresaw His violent death, at least from a certain point of time in His public life.<sup>1</sup> On His last

<sup>1</sup> For instance Mark 2:18-22 (the Taking Away of the Bridegroom); Mark 10:38 (the Cup of Death and the Baptism of Death; somewhat similar in Luke 12:50); Luke 13:31-33 (Jerusalem, killer of prophets); Mark 10:45 (life to be given as a ransom); Mark 14:8 (the anointing at Bethany), and so on. Cf. G. KITTEL, "Jesu Worte über sein Sterben," DTh, 3 (1936), 166-189; R. OTTO, *Reich Gottes und Menschensohn* (3rd ed., 1954), pp. 290-295 (p. 295: "Jesus

journey to Jerusalem, according to the synoptics, Jesus spoke not merely of His approaching sufferings and death, but also of various details of those sufferings. To be sure, the three great synoptic prophecies of the passion are now commonly regarded by critical scholarship as *vaticinia ex eventu*, that is to say, as creations of the primitive Church. It would be more correct to say that the three discourses, especially the third one, which enters into details, owe their traditional form to the primitive Christians, who look back on the passion as a historical fact. But the question as to how authentic down to the last detail of language those utterances are, is not relevant to our case. Even if the prophecies of the passion were only inventions of the Christian community<sup>2</sup>—a thing which is neither proven nor open to proof—it would still be permissible to bring them forward to illuminate the story of the passion, as in that case they would at least be reflections of what the faithful knew of the events of Good Friday.

### First Prediction of the Passion

"The Son of Man must suffer many things, and be rejected by the elders and chief priests and scribes, and be put to death, and after three days rise again" (Mark 8:31).<sup>3</sup> Here, besides His pain-

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really did foresee His passion; He possessed the charisma of prophecy and exercised it upon Himself"); V. TAYLOR, *Jesus and His Sacrifice* (1948), pp. 82-163; J. JEREMIAS, TWB, V, 710 f.

<sup>2</sup> TAYLOR, *op. cit.*, pp. 85-90, defends the authenticity of the three passion predictions with sound reasoning.

<sup>3</sup> Matt. 16:21 and Luke 9:22, almost word for word the same. The words "suffer many things and be rejected" have a parallel in Mark 9:11: "But how then is it written of the Son of Man, that he should suffer many things and be despised?" (cf. Luke 17:25). It is very natural to take "suffer" here in the precise sense as meaning the whole passion and death, as for instance K. H. SCHEKLE does, *Die Passion Jesu* (1949), pp. 73 f., and H. VON CAMPENHAUSEN, *Die Idee des Martyriums in der alten Kirche* (1936), p. 62, but the words which follow, "and be despised" make it more probable that the narrower sense is meant (cf. H. W. WOLFF, *Jesaja 53 im Urchristentum* [1942], p. 59). In that case one would have to construe the words in Mark 8:31 in the same sense, the more so since here being "put to death" is mentioned specially. The third prediction of the passion specifies the concrete stages in which this "suffer much" will be realized; He will be mocked, spat upon and scourged (Mark 10:34). It is uncertain which O. T. texts are referred to in Mark 9:12; they could be Ps. 22 (21) and Isai. 53:3. Cf. H. WOLFF, *op. cit.*, p. 60, n. 276; G. WIENCKE, *Paulus*

ful and violent death, Jesus foretells that in the last phase of His life the highest Jewish authority, the Sanhedrin, which was composed of the three categories of persons named, would occupy itself with Him, and in doing so, would "reject" Him. The latter expression, which occurs frequently in the New Testament, is not a legal term, and therefore does not refer specifically to the death sentence pronounced by the Sanhedrin. It is to be met with in profane Greek in phrases such as the expressions for declaring coins to be false, refusing to recognize lots which have been drawn, or cashiering a soldier from the forces, etc.<sup>4</sup> Here it means that the Sanhedrin, on examination, will repudiate and refuse to recognize Jesus, His person and His message, and will declare Him to be unguenuine. The expression "reject" does not mean that this decision will result in the condemnation of Jesus to death, but the context, namely the words, "and be put to death," which follow directly, certainly do. It is not said who does the killing. The definition "by the elders," etc., only refers, as the wording stands, to the verb "rejected." It is significant that the maltreatment, rejection, and killing are represented not as simple future happenings but as something necessary and inevitable. The word "must" does not mean a necessity arising from earthly circumstances; it means, on the contrary, that the whole frightful happening corresponds to the will of God, to which Jesus bows in this as in all else. The scene which follows upon this prophetic discourse confirms this meaning of the words. When Peter shows his displeasure at what he has just heard, Jesus rebukes him sharply: "Thou dost not mind the things of God, but those of men" (Mark 8:33). The first prediction of the passion does not refer to the legal side

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über Jesu Tod (1939), p. 168. W. MICHAELIS, *Herkunft und Bedeutung des Ausdrucks "Leiden und Sterben Jesu Christi"* (1945), understands "suffer" as a translation of the Hebrew *sabal* = to carry or bear, and sees in the words an allusion to Isai. 53:4 and 11, in which it is written that the Servant of God would carry the "sorrows" and "infirmities," i.e., the sins of man, that is to say, the whole burden of human guilt ("much" in Hebrew = "all"). Though this hypothesis is not without its difficulties (cf. J. JEREMIAS, ThLZ, 75 [1950], 35), it is worthy of consideration.

<sup>4</sup> Cf. GRUNDMANN, TWB, II, 258-264; K. L. SCHMIDT, *Judaica*, I (1945), 22.

of the Good Friday events, but one can infer from it that the rejection of Jesus by the Sanhedrin will result (directly or indirectly) in His execution.

### Second Prediction of the Passion

"The Son of Man is to be betrayed into the hands of men, and they will kill him" (Mark 9:31).<sup>5</sup> The play on words Son of Man—hands of men—shows where the emphasis lies: the Son of Man, the future lord and judge of the world, will come into the hands of men, into men's power; this contrast is implicit in the second half of the sentence also. Whether Jew or heathen will kill Jesus is unimportant here; the emphasis lies on the fact that men will presume to kill the Son of Man, who has come down from heaven. In this text too the idea is implicit that God's decree is thereby realized. For it is God and not, for instance, Judas, who is to be thought of as he who delivers up the Son of Man (note how the passive voice is used in the construction of the sentence to avoid using the name of God).<sup>6</sup>

### Third Prediction of the Passion

"Behold, we are going up to Jerusalem, and the Son of Man will be betrayed to the chief priests and the scribes; and they will condemn him to death, and will deliver him to the Gentiles; and they will mock him, and spit upon him, and scourge him, and put him to death" (Mark 10:33 f.).<sup>7</sup> This final great announcement of the passion is actually a brief abstract of the story of the passion; indeed it is quite probable in itself that Jesus foretold His end with increasing definiteness and detail. Besides the statement that the sufferings would take place in Jerusalem, seven separate events are specified:

1. The delivery over to the Sanhedrin in accordance with God's

<sup>5</sup> Matt. 17:22 f. is essentially the same, while Luke 9:44 does not have the second part.

<sup>6</sup> Cf. John 3:16; Rom. 8:32.

<sup>7</sup> Likewise Matt. 20:18 f., except that the spitting upon is passed over and being "put to death" is changed to "crucified"; Luke 18:31-33 leaves out the first words about what the Jews would do, and the scourging is added.

decree. The fact that only the chief priests and scribes are named here and not the elders too, is due to a literary chance and is not an indication that the latter did not cherish any particular hatred for Jesus.

2. The condemnation by the Sanhedrin. The expression does not allow of any interpretation other than that a formal sentence of death will be passed by the Sanhedrin. Since condemnation presupposes a trial, the hearer or reader has a right to assume that a trial by the Sanhedrin precedes the Jewish death sentence.

3. Delivery to the Gentiles. Since Jerusalem is the scene of events, this can only refer to the Romans. The persons delivering up are the sanhedrists. Hence it is from the Romans that Jesus suffers being 4. mocked; 5. spat upon; 6. scourged; and 7. put to death. It is striking that nothing is said of sentence of death being passed by the Roman court. We recall that in his passion narrative also Mark describes the verdict of Pilate merely as follows: "But Jesus he scourged and delivered to be crucified" (15:15). Presumably the evangelist, who is writing in Rome, prudently avoids on political grounds mentioning the formal passing of a sentence by the Roman governor. In view of the persecutions of the Christians, which set in early, it was not advisable to represent the Founder of Christianity too distinctly as one who had been legally tried and executed by a Roman court. The enumeration of the separate sufferings inflicted follows the historical sequence and agrees with the actual account of the trial in Mark. In view of Mark 15:15-20 one would expect only the mocking and spitting upon to be placed elsewhere, namely, after the scourging. It would seem that this change of place is intended to make all the separate actions of the Romans mount up to a climax: Jesus has to endure from them a progressively more terrible scale of bitter sufferings—mockery, abuse, physical ill-treatment, and finally, death. A less-probable conjecture is that the placing of these punishments before the scourging was meant to convey that the Jews, who had been mentioned just before, were also guilty of inflicting these two forms of maltreatment. (Mark, in 14:65, reports Jews mocking

and spitting upon Jesus.) In the parallel text of Luke it is doubtful, by the way, which mocking the Third Evangelist has in mind—whether the Jewish, or the Roman, or both: "For he [the Son of Man] will be delivered to the Gentiles, and will be mocked and scourged and spat upon, and after they have scourged him, they will put him to death" (Luke 18:32 f.). Precisely like his source, Mark, Luke apparently thinks of the delivery to the Romans as the work of the Jews; therefore it would seem appropriate to amplify as "by the Jews" the other things which are reported in the passive mood, and to understand only the clause in the active mood, "they will," as applying to the Gentiles.<sup>8</sup> Furthermore, Luke in his passion narrative reports only a mocking by the Jews and none by the Roman soldiers. But however we may interpret Luke's text, which was probably left ambiguous deliberately, it definitely does not throw much light on the historical sequence of the events making up the passion. Here Luke is relying, not upon better information but solely upon Mark. Therefore it would not seem permissible to think of the Third Evangelist as being influenced by a separate source when he suppresses the death sentence of the Sanhedrin here as also later in the passion narrative. Admittedly, biblical scholars cannot assign any completely satisfying motive for this omission. Exoneration of the Jews is not the motive, for elsewhere Luke in the most emphatic manner assigns the main guilt for the death of Jesus to the Jews. For instance, he makes the disciples of Emmaus say: ". . . and how our chief priests and rulers delivered him up to be sentenced to death, and crucified him" (Luke 24:20).<sup>9</sup> It is not absolutely clear which court Luke has in mind here as having pronounced this death sentence *κρίμα θανάτου*;<sup>10</sup> his passion narrative does not mention any formal death sentence at all, but since the expression "deliver up" is surely only applicable if it is based upon the conception (either concrete or ideal) of the surrender from one per-

<sup>8</sup> This is also the view of K. L. SCHMIDT, *Judaica*, I (1945), 25.

<sup>9</sup> Cf. further, Luke 23:23-25, and similar passages in the Acts of the Apostles.

<sup>10</sup> For this expression see F. BÜCHSEL, TWB, III, 943, n. 5.

son or group of persons to another, then it must be assumed that the *Roman* death sentence is the one the disciples of Emmaus had in mind. Hence, Luke betrays quite casually here that he knows of a sentencing of Jesus by Pilate. Perhaps he refrained from mentioning Pilate's sentence and more especially that of the Sanhedrin because he, the most educated of the evangelists, considered that his non-Jewish readers, who were not very familiar with the singular legal position in the Palestine of that day, would not have understood the judicial anomaly of a duplicated condemnation and sentence. Of more relevance here is the fact that he appears to name the "chief priests and rulers," of the Jews, that is, the Sanhedrin, as actually the executants of the crucifixion. But doubtless he has in mind a merely indirect part in the act, and hence means the word "crucified" to be understood in the causative sense, so that the sentence really means: Our chief priests and leaders delivered Him up (to the Romans) to be sentenced to death and crucified (by them). True, Luke's passion narrative is remarkably lacking in clarity regarding the question of who led Jesus away to be crucified. Luke 23:26 says: "And as *they* led him away . . ." The Jews have been mentioned just before, but since the soldiers and the Roman centurion are brought in a little farther on (23:36, 47), it cannot have been the evangelist's intention to differ from Mark on this point of the story. The lack of clarity in Luke 23:26 is unintentional since it is caused by the omission of Mark's mocking scene.<sup>11</sup>

Luke alone records yet a fourth prediction of the passion, which he brings into the parousia discourse: "But first [i.e., before the parousia], he [the Son of Man] must suffer many things and be rejected by this generation" (17:25). Hence, again the necessity of the passion, that is to say, the fact that God wills it, is emphasized. But the number of those persons who have a part in the rejection of Jesus is conceived as very large here. "This generation" refers to the contemporaries of Jesus, the Jewish con-

<sup>11</sup> Cf. J. BLINZLER, "Vom synoptischen Lesen," *Klerusblatt*, 29 (1949), 170 f.

temporaries, moreover, who rejected the witness of Jesus by an overwhelming majority and in a particular manner through their official representatives.

Similarly, Luke is the only evangelist who reports the words of the angel at the empty tomb with their allusion to one of the Galilean prophecies of the passion: "Remember how he spoke to you while he was yet in Galilee, saying that the Son of Man must be betrayed into the hands of sinful men, and be crucified" (Luke 24:6-7). Here the sinners are not the Gentiles in contrast to the Jews, but men in contrast to God and to Him whom God had sent. The words are an amplified version of the second Galilean prophecy of the passion.

And finally, Jesus referred to His violent death and to those who would bring it about in a great and profoundly impressive allegory, the parable of the wicked vinedressers (Mark 12:1-12). He tells of the vineyard tenants who seize and beat and in some cases even kill the servants whom the owner of the vineyard sends to them to collect the part of the harvest due to him as rent. Finally he sends his only son to them, but they seize him and kill him and throw him out of the vineyard. In this very transparent allegory Jesus makes the following disclosures concerning His end:

1. He will suffer a violent and shameful death. The shameful manner of His death is indicated in the metaphor of the murdered man being thrown out of the vineyard. Only Matthew and Luke understood this as alluding to Jesus' execution outside the city walls, and they accordingly reversed the order here (throwing out, then killing).

2. The authors of His death are the leaders of the Jewish people. For of course the vinedressers are the people to whom the care of the vineyard is entrusted; and the vineyard is the metaphorical image for Israel as holders of the divine privileges and promises. Thus, in this parable too, which is recorded by all three synoptics, the Jewish leaders figure as the persons responsible for the death of Jesus. In its sequel the discourse tells of the coming punish-

ment of the Jewish leaders. God will "destroy" them, that is, let them fall into eternal damnation. Moreover, a judgment will be visited on the Jews as a whole: the vineyard will be given to others. This doubtless means: the Jews will cease to be God's Chosen People; they will be replaced by the New Israel, the community of the faithful who believe in Christ. The Jewish people have earned this punishment by the fact that with and through their representatives they have, again and again all down their history, gone against the will of God as made known to them by the prophets, and finally they have gone so far as to reject and send to a shameful death God's Beloved Son Himself. The parable recognizes not alone the guilt of the sanhedrists but also the complicity of the people, who as a whole were solidly on the side of their leaders.

Nevertheless, the passion is part of God's eternal plan of salvation. The divinely ordained character of Jesus' sufferings and death, which is expressed by the word "must" in the first prediction of the passion as also in two further utterances of Jesus given in Luke, and in the second and third predictions of the passion by the passive voice employed in the construction, is shown in many other passages of the gospels as relating to happenings foretold in Holy Scripture. What the Old Testament foretold concerning the Messiah must happen and corresponds to the will of God; for Holy Scripture is God's Word. Thus, not merely the passion as a whole<sup>12</sup> but also many incidental happenings, are represented as fulfilling Holy Scripture and being according to God's decrees—for instance, the betrayal of Judas, the arrest of Jesus, the flight of the disciples, the raising up on the wood of the cross and the shameful death as a criminal.<sup>13</sup> Naturally, scriptural proof plays an important role in the actual passion narrative. The evangelists note the fulfillment of the words of Scripture in some cases by direct allusion to the texts in ques-

<sup>12</sup> Luke 18:31; 24:25-27; 24:44-46; Mark 14:21,49; 9:11; Matt. 12:39; Mark 12:10; Luke 9:31 f.; cf. John 15:25.

<sup>13</sup> Mark 14:18; John 13:18; Mark 14:49; Matt. 26:54; Mark 14:27; John 3:14; Luke 22:37.

tion, and in others tacitly by the stylistic adaptation of their reports to the wording of such texts.

## II. The Trial of Jesus in the Acts of the Apostles

The tragedy of Good Friday is recalled in the following eleven passages of the Acts of the Apostles:

### 1. Peter's Pentecost discourse in Jerusalem

"Men of Israel, hear these words. Jesus of Nazareth was a man approved by God among you by miracles and wonders and signs, which God did through him in the midst of you, as you yourselves know. Him, when delivered up by the settled purpose and foreknowledge of God, you have crucified and slain by the hands of wicked men" (2:22 f.).

### 2. Conclusion of Peter's pentecostal discourse

"Therefore, let all the house of Israel know most assuredly that God has made both Lord and Christ this Jesus whom you crucified" (2:36).

### 3. Peter's discourse to the Jews of Jerusalem in the Temple

"The God of Abraham and the God of Isaac and the God of Jacob, the God of our fathers, has glorified his Son Jesus, whom you indeed delivered up and disowned before the face of Pilate, when he had decided that he should be released. But you disowned the Holy and Just One, and asked that a murderer should be granted to you: but the author of life you killed" (3:13-15).

### 4. Continuation of Peter's Temple discourse

"And now, brothers, I know that you acted in ignorance, as did also your rulers. But in this way God fulfilled what he had announced beforehand by the mouth of all the prophets, namely, that his Christ should suffer. Repent therefore and be converted" (3:17-19).

### 5. Peter before the Sanhedrin

". . . in the name of Jesus Christ of Nazareth, whom you crucified, whom God has raised from the dead, even in this name does he [the cured cripple] stand here before you, sound. This is

*The stone that was rejected by you, the builders, which has become the corner stone*" (4:10 f.).

6. From a public prayer of the Christian community in Jerusalem

*"Why did the Gentiles rage and the peoples plan vain things? The kings of the earth stood up, and the rulers assembled together against the Lord and against his Christ [Ps. 2:1 f.]. For of a truth there assembled together in this city against thy holy servant Jesus, whom thou hast anointed, Herod and Pontius Pilate with the Gentiles and the peoples of Israel, to do what thy hand and thy counsel decreed to be done"* (4:25-28).

7. The high priest to the apostles

*"We strictly charged you not to teach in this name, and behold, you have filled Jerusalem with your teaching, and want to bring this man's blood upon us"* (5:28).

8. Peter to the high priest and the members of the Sanhedrin

*"The God of our fathers raised Jesus, whom you put to death, hanging him upon a tree"* (5:30).

9. Stephen before the Sanhedrin

*"Which of the prophets have not your fathers persecuted? And they killed those who foretold the coming of the Just One, of whom you have now been the betrayers and murderers"* (7:52).

10. Peter's words to the pagan centurion, Cornelius, and his circle in Cæsarea

*"And we are witnesses of all that he did in the country of the Jews and in Jerusalem; and yet they killed him, hanging him on a tree"* (10:39).

11. Paul to the Jews of Antioch

*"For the inhabitants of Jerusalem and its rulers, not knowing him and the utterances of the prophets which are read every Sabbath, fulfilled them by sentencing him [κρίναντες]; and though they found no ground for putting him to death, they asked of Pilate permission to kill him. And when they had carried out all that had been written concerning him, they took him down from the tree and laid him in a tomb"* (13:27-29).

As well as placing the events in Jerusalem (6., 10., 11.), these texts make the following statements concerning the course of the trial of Jesus:

Jesus was first delivered into the hands of the Jews (1.); the latter pronounced sentence on Him (11.); delivered Him over to Pilate (3.), who in the course of the proceedings sought to release Him (3.); the Jews protested this and demanded the release of a murderer instead (3.) and the execution of Jesus (3., 11.); this was finally carried out by the Gentiles, i.e., the Romans (1., 3., 11.) in the form of crucifixion (1., 2., 5., 8., 10.). In one phase of the proceedings, Herod Antipas, the local ruler of Galilee, was involved in the action side-by-side with Pilate (6.).

So far, the particulars gleaned from the Acts of the Apostles fit in exactly with the picture drawn by the evangelists. Only two of the texts from the Acts seem not to agree completely with this picture. In the public prayer of the community (6.) the names of Herod and Pilate are coupled in a way which gives the impression that these rulers, together with their respective Jewish and pagan followers, had been the real enemies of Jesus. According to the evangelists, however, the chief actors behind the condemnation were the sanhedrists, whereas those two potentates adopted an attitude which was favorable rather than otherwise toward Jesus. But this divergence does not force us to revise the conception of the trial of Jesus which we have gained from the gospels. For it is plain that the public prayer of the community expresses a historic picture colored by the Christians' desire to see as many words as possible of the messianically interpreted Psalm 2 fulfilled in Christ. The second verse of this Psalm speaks of "kings" and "rulers" who "assembled together" against the Messiah. What could be more obvious than to take this as alluding to the "king" Herod—he was called king by the common folk—and Pontius Pilate, the head of the foreign power, who joined forces on the day of Jesus' death and did on the whole adopt an antimessianic attitude, the one by the mocking, the other by his final condemnation of Jesus (cf. Ignatius of Antioch *Smyrn.* i. 2.)? Of still

less weight is another divergence. When Paul asserts in his discourse at Antioch that the Jews and their leaders had found no ground for putting Jesus to death (11.), this is certainly not to be understood as a confusion with the well-known utterances of Pilate recorded in the gospels, nor as a contradiction of Mark 14:64, but rather as an expression of the apostle's own conviction.

The Jews are normally mentioned as the persons answerable for the death of Jesus. That they did not carry out the execution themselves but used the "wicked," that is to say, the pagan Romans, for this purpose, is admitted (2.). It is also indicated several times that the final decision for execution or release lay in the hands of Pilate (3., 11., cf. 6.). If certain groups within the Jewish people are reproached with the death of Jesus, it is generally the members of the Sanhedrin. They crucified Jesus (5.), they hung Him on a tree and so put Him to death (8.), they were the betrayers and murderers of Jesus (9.). And they know, too, that they are held responsible for doing so by the apostles (7.). But the circle of the guilty is bigger than this. Twice the inhabitants of Jerusalem are placed on the same level with the Jewish leaders (4., 11.), and sometimes, actually, they alone are reproached with having crucified Jesus (2.), and putting Him to death (3.). Only when the early Christian preacher has a Gentile audience before him, as Peter had in Cæsarea, does he speak in a general way of the Jews as those who killed Jesus by hanging Him on a tree (10.). But in this particular text it is not even made clear that it was Jews who were guilty of the death of Jesus. The statement "they killed him" is indefinite and could also be translated as "he was killed." Only the context gives one to understand that the Jews are to be taken as the subject of the sentence.

This last observation helps us to understand why the apostles inveighed against the Jews so frequently and at times so sharply. Their imputations are not the expression of a basically anti-Semitic attitude, otherwise this would also be in evidence, and indeed more especially so, when the apostles were preaching to the pagan world. Besides, all the apostles were, of course, Jews them-

selves, and proud of it. Their sharp and sometimes seemingly exaggerated words concerning the guilt of the Jews must be taken, rather, to be part of their mission to the Jews. The early Christian missionary who wished to win the unbelieving Jewish people had first of all to impress his hearers with a recognition of their great historical guilt. He was, in other words, a preacher of repentance, and as such he had to use forcible arguments. Hence it is understandable that the apostles, convinced as they were that the main blame for the crucifixion of Jesus lay on the Jews, ignoring the Romans' share of the guilt, declared in effect: You, sanhedrists, you, citizens of Jerusalem, crucified Jesus, you killed Him, you executed Him, you put Him to death. But because these preachers wanted to win this Jewish people for Christ, not to repel them, they sometimes found more conciliatory words. They said that not merely the population of Jerusalem but also actually the Sanhedrin, had acted in ignorance (4.), and had not known Jesus (11.). Expressions of this kind can almost be interpreted as meaning that the Jews are absolved at least of subjective guilt. But the ignorance which the speakers have in mind is definitely a culpable ignorance, for it is emphasized, on the other hand, that Jesus had been proved what He was by the miracles, signs and wonders which God had worked through Him in their midst (1.). Here again the admission of the Jews' ignorance is used for the purpose of the call to repentance; it is meant to make clear that the way to forgiveness is still open in spite of everything.

This also applies in a certain sense to the utterances which emphasize that the Cross was willed by God, and was an essential part of the divine plan of salvation (1., 6.), and which characterize it as fulfilling the scriptural prophecies (4., 11., 5., 6.). These statements were not aimed at denying the historical guilt of the Jews, but were meant to smooth the way to repentance for them. For the Jews' main objection against belief in Jesus (Gal. 3:13 f.) could not continue to exist if they once recognized the fact that Christ's death on the cross was a fulfillment of Scripture and willed by God. But besides their missionary and apologetic pur-

pose, such statements and such realization naturally had significance for the believing Christian community too.

### III. The Trial of Jesus in the Epistles of the Apostle Paul

In his many epistles, Paul hardly enters at all into the outward historical course of the passion of Jesus. True, the Cross occupies the central place in his gospel, but his concern is not to describe the historical happening but to demonstrate the significance for the salvation of mankind of the passion and death of Jesus. Nevertheless, the few isolated texts in which Paul expresses himself concerning those responsible for the death of Jesus deserve to be examined in pursuance of our theme.

In his earliest epistle, Paul refers to the Jews as those who "both killed the Lord Jesus and the prophets" (1 Thess. 2:15). This is the only place in Paul's writings where the Jews are made responsible for the death of Jesus. As Paul's reflections are not focused on the purely historical aspect, he speaks far more frequently of the mysterious hidden originators of the death of the cross. According to Romans 8:32, God is "He who has not spared even his own Son but has delivered him for us all." The sentence "our Lord Jesus . . . who was delivered up for our sins" (Rom. 4:24-25) is also to be understood in this sense; even the passive mood in which it is couched points to a divine action and contains, moreover, an allusion to the words of Isaiah 53:4-6, hence it is an indirect scriptural proof. Thus, when the same apostle calls the night of the Last Supper "the night in which the Lord Jesus was delivered up" (1 Cor. 11:23), this too is doubtless to be completed as "by God" and not "by Judas." On the other hand, the apostle also speaks of the voluntary nature of the suffering and death of Jesus. Thus he can even say: ". . . Christ . . . the Son of God, who loved me and gave himself up for me" (Gal. 2:20) or "Christ also loved us and delivered himself up for us, an offering and a sacrifice to God" (Eph. 5:2).

But the most striking words concerning those responsible for the death of the cross are to be found in 1 Cor. 2:7-8: "But we

preach the wisdom of God, mysterious, hidden, which God fore-ordained before the world unto our glory, a wisdom which none of the rulers of this world [eon] has known, for had they known it, they would never have crucified the Lord of glory." Hence, it was the diabolic forces ruling that eon who nailed Jesus to the cross. This conception seems so strange to the commentators of St. Paul that many of them choose to understand the rulers of this world as earthly, human potentates, contrary to the normal Pauline use of language.<sup>14</sup> Actually, however, the concept we meet with here is an authentic Pauline concept. The Epistle to the Colossians (2:15) provides the most illuminating amplification of our text. In this passage Paul says, in effect, that Christ, in dying on the cross, redeemed the world from sin, from the tyranny of the flesh, and from death, and at the same time robbed Satan and his hosts of their power over the world. The first-named text means, then, that the spirits inimical to God thought in their short-sighted, dæmonic wisdom that by accomplishing the death of Christ on the cross they would increase the dominion of sin in the world and thus strengthen their own position of power; but instead their power was broken on the cross.

Paul is not alone in his view that the human enemies of Christ were influenced by satanic beings. 1 Cor. 2:8 throws light on some isolated texts in Luke and John, which we shall deal with here. Luke mentions that Satan entered into Judas (Luke 22:3; cf. v. 31); further, he makes Jesus, in Gethsemane, ascribe the success of those who come to seize Him to "the power of darkness" (22:53), that is to say, Satan and his hosts, whose tools they have become. He concludes his story of the temptation with the words: "And when the devil had tried every temptation, he departed from him for a while" (4:13). This means until the hour of the passion, at which the devil renewed all his activity against Christ.

<sup>14</sup> Finally, cf. J. ISAAC, *Jésus et Israël* (1948), p. 510: "Les chefs de ce siècle—sans doute ceux qui détiennent le pouvoir politique, les autorités romaines ou juives, romaines et juives—, sont donc ici désignées comme les auteurs responsables de la Crucifixion."

Similar utterances are to be found in the Gospel of St. John. Here too it is said that Satan took possession of Judas (13:27) having already inspired in him the thought of betraying Jesus (13:2). Referring to the approach of the traitor Judas, Jesus says: "For the prince of the world is coming, and in me he has nothing" (14:30). The faithless apostle is represented as the tool of the devil, who is about to celebrate his ostensibly greatest triumph on Golgotha, whereas in truth what happens on the cross is his most thorough defeat: "Now will the prince of the world be cast out" (12:31), that is to say, in the time of salvation which has its beginning on Golgotha.

It seems that reference is made only once in the Epistles of Paul to a definite part of the trial of Jesus, namely, in 1 Tim. 6:13, in which it is said that Christ Jesus "bore witness before Pontius Pilate to the good confession." This text is interpreted in various ways. Many, and most recently E. Günther, think that it refers to the messianic self-testimony of Jesus before the procurator. Others believe it refers to Jesus' death of witness on the cross (Reitzenstein, Dornseiff, Joachim Jeremias); others, again, believe it refers to both forms of bearing witness (von Campenhausen, Strathmann, Asting).<sup>15</sup> Apparently the reason for the obscurity of this text is that the apostle has adapted some words from a primitive Christian creed to his parænetic context and amplified these with the words "the good confession."<sup>16</sup> The words of the formula apparently were that Jesus had died the death of witness "with," that is to say, under Pontius Pilate. This would make it synonymous with the formula of the Roman Creed: *passus sub Pontio Pilato*.<sup>17</sup>

<sup>15</sup> E. GÜNTHER, *Martyrs* (1941), p. 133; R. REITZENSTEIN, *Bemerkungen zur Martyrienliteratur*, I (1916), 438; FR. DORNSEIFF, *ANTIDORON. Festgabe für J. Wackernagel* (1923), pp. 115-117; JOACHIM JEREMIAS, *Die Briefe an Timotheus und Titus* (5th ed., 1949), p. 37; H. VON CAMPENHAUSEN, *Die Idee des Martyriums in der alten Kirche* (1936), pp. 50 f.; H. STRATHMANN, TWB, IV, 504; R. ASTING, *Die Verkündigung des Wortes im Urchristentum* (1939), pp. 634 f.

<sup>16</sup> Thus M. DIBELIUS, *Die Pastoralbriefe* (2nd ed., 1931), p. 55; K. H. SCHELKLE, *op. cit.*, pp. 250 f.; K. STAAB—J. FREUNDORFER, *Die Thessalonicherbriefe, die Gefangenschaftsbriege und die Pastoralbriefe* (1950), p. 214.

<sup>17</sup> In Latin, in which there is no equivalent for *μαρτυρεῖν* in the sense of "to

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To sum up, the following is to be said of the allusions<sup>18</sup> to the trial of Jesus to be met with in the New Testament.

Nothing which could materially supplement the trial narratives of the gospels is to be found anywhere. Any apparent divergences which occur can be explained without difficulty. Therefore, there is no reason to correct the picture gained from the gospel narratives of the passion. The question of who brought about the death of Jesus receives many entirely different answers. Those who set the drama of Golgotha in motion appear at one time to be the sanhedrists and the inhabitants of Jerusalem, at yet another, Judas or Pilate, or the devil and his wicked hosts; or again as God, or Jesus Himself. The very fact that these different assertions are to be met in one and the same New Testament author shows that no contradiction was found between this juxtaposition of different answers; it *does* mean however that the responsibility for the death of Jesus is regarded each time from a completely different point of view. When the passion is traced back to the will of God

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die the death of witness," *μαρτυρίας* can be rendered by *passus*, see St. W. TEEUWEN, *Sprachlicher Bedeutungswandel bei Tertullian. Ein Beitrag zum Studium der christlichen Sondersprache* (1926) p. 74.

<sup>18</sup> I Peter 2:23 could be taken as alluding to the trial before Pilate if it read (like the Vulgate, Cyprian, and Clement of Alexandria) Christ "yielded himself up to the unjust judge" ( *δδλκως* instead of *δικαλως* ), but despite the fact that Adolf von HARNACK recommends it, *Zur Revision der Prinzipien der ntl. Textkritik* (1916), pp. 89 f., this reading is not tenable. In James 5:6: "You have condemned and put to death the just, and he did not resist you," "the just" is not Jesus, as J. ISAAC, *op. cit.*, pp. 511 f., and K. THIEME, *Hochland*, 45 (1953), 211, maintain, but the pious poor man oppressed by the unjust rich. Those guilty of the death of Jesus are alluded to, furthermore, in Apoc. 1:7: "And every eye shall see him, and they also who pierced him." Naturally these words do not refer only to the Roman soldier who pierced Him with a lance but to "all who brought about His death" (Th. ZAHN, *Die Offenbarung des Johannes*, I [1924], 177); but perhaps all the enemies of Christianity in the world are meant (as maintained by W. HADORN, *Die Offenbarung des Johannes* [1928], p. 26; A. WIKENHAUSER, *Die Offenbarung des Johannes* [1947], p. 29; and J. BEHM, *Die Offenbarung des Johannes* [4th ed., 1949], p. 10, who writes: "Der christliche Prophet sieht nicht nur die Juden als die Mörder Jesu an: 'alle Geschlechter der Erde' mit ihrer Sünde haben ihn ans Kreuz geschlagen"). Cf. also Heb. 6:6, where it is said that sinful Christians "crucify (again) for themselves the Son of God and make him a mockery."

and of Jesus, or to the activities of Satan and his diabolic forces, it is in no wise intended thereby to dispute or even to minimize the guilt of those historically responsible. Declarations of this kind are, on the contrary, theological, dogmatical interpretations of the *scandalum crucis*. It would be a *μετάβασις εἰς ἄλλο γένος* were one to try to answer the question regarding the historical guilt with one of these theological-dogmatical assertions, or to contest the right to pose that question with a reference to these assertions which are to be found in the New Testament. Hence Jewish apologists have no right to use the following arguments: If the crucifixion corresponds to the will of God and of His Son Himself, then it is not permissible to reproach the Jews of that time with having brought about His condemnation and execution; for, after all, they were only the obedient instruments of God in this.<sup>19</sup> The texts from the New Testament which have been dealt with above *do* give a clear answer to the question as to who were *historically* responsible for the death of Jesus. It was the Jews, or, to be more exact, the members of the Sanhedrin of the time and the inhabitants of Jerusalem who made common cause with them; but the complicity of the Roman procurator, Pilate, is also emphasized.

<sup>19</sup> A. WEILL, *Moïse, le Talmud et l'Évangile* (4th ed., 1891), p. 227: "Si Jésus est Dieu, s'il s'est fait homme pour être crucifié afin de racheter l'humanité, les Juifs qui l'ont crucifié n'étaient que ses fidèles instruments. Loin de punir leurs descendants, les chrétiens devraient leur décerner des récompenses, pour avoir obéi à la voix de Dieu, afin de contribuer au rachat de l'humanité, pour laquelle il a souffert avec amour, avec passion!" A similar argument is advanced by H. M. COHN, "Sein Blut komme über uns," *Jahrb. f. jüd. Geschichte und Literatur*, 6 (1903), 89; J. S. BLOCH, *Israel und die Völker nach jüdischer Lehre* (1922), p. 98; E. G. HIRSCH, *The Crucifixion* (3rd ed., 1921), p. 61, and M. MIESES, *Der Ursprung des Judenhasses* (1923), pp. 510 f. Even a "Christian" author has recently dared to use similar words: If the death of Jesus was necessary for the salvation of the world then the Jews had acquired the greatest merit when they crucified Him (J. STEINBECK, *Mythus und Wahrheit* [1954], p. 65).

## 16. CONCLUSION

ANYONE WHO undertakes to assess the trial of Jesus as a historical and legal event, reconstructing it from the gospel narratives of the passion, must come to the same conclusion as the early Christian preachers did, namely, that the main responsibility rests on the Jewish side. True, *one* reproach which has been leveled again and again right down to our own times against the Jewish judges of Jesus, must be dismissed; for it cannot be proved, but on the contrary can be shown to be utterly unlikely, that the Sanhedrin, in its proceedings against Jesus, was guilty of disregarding the legal forms. Both the arrest of Jesus and the proceedings instituted against Him were obviously completely in accordance with the law that was valid at that time. The only thing that is questionable is whether the death sentence passed by the Sanhedrin was juristically incontestable, that is to say, whether the sanhedrists, in declaring the messianic self-testimony of Jesus to be blasphemy, were giving a judgment in accordance with their convictions and with the criminal law of the time. As the narrow Mishna definition of blasphemy definitely was not yet in force in the time of Jesus, more especially not for the predominantly Sadducean-minded Sanhedrin, the possibility cannot be excluded that the members of the Sanhedrin were subjectively convinced that Jesus had committed the crime of blasphemy by His assertion. Nevertheless, when all the circumstances are weighed exactly, the conclusion is reached that a conscientious and unbiased bench, even if it had remained incredulous of the messianic claim of Jesus, should at least have had some doubts as to whether the actual facts of the case constituted a grievous crime. When the whole or almost the whole of the Sanhedrin voted for a verdict

of guilty, one must conclude that the judges were strongly biased against the Accused. But it is only in the further course of events that the malicious attitude of the sanhedrists emerges quite clearly. They brought an action against Jesus before the court of the Roman governor, charging Him with calling Himself King of the Jews, that is to say, with being a pretender to the throne of Judea. This charge was not a mere translation of the name Mesias, but a deliberate distortion of the charge on which their own condemnation had been based. Being aware that they could achieve nothing with the simple charge of blasphemy before the governor's court, they lent his charge a political significance though they must have known that Jesus had never combined any subversive political interests with His messianic ideal. Neither His self-testimony before the Sanhedrin nor His attitude in general gave cause for such an imputation. Finally, the fact that His enemies were not concerned for the law, nor even for a false concept of the law, but were only aiming at the destruction of Jesus at any price, is clear from their efforts to hinder Pilate from pronouncing a free and legal judgment by intimidating him with threats and so forcing him to pass sentence of death.

The Jews who incurred this guilt consisted of two groups—the members of the Sanhedrin and the crowd who demonstrated against Jesus. If one asks the motives of the unrelenting enmity of the first group toward Jesus, the gospels give three answers: In the first place, the Jewish leaders saw in the popularity of Jesus a danger for their own authority with the populace. In the second place they feared—particularly the sadducean elements in the Sanhedrin—that if the movement Jesus led grew much stronger the Romans would intervene and deprive the nation of the remnant of self-government which it still possessed. Thirdly, the peculiar nature of His religious message had made Jesus disliked and hated by the members of the Sanhedrin, particularly the scribes and Pharisees. Hence the mortal enmity which the ruling circles cherished toward Jesus had personal, political, nationalistic and religious grounds.

By their tumultuous demand for the execution of Jesus the crowd made common cause with the Sanhedrin before the Roman tribunal. It is plain that it consisted only of inhabitants of Jerusalem. Their guilt was less than that of the sanhedrists because they did not intervene in the trial on their own volition, but only when incited to do so by their leaders. It is clear, however, that their complicity was not without importance since Christ probably would not have been condemned to death by Pilate but for them. Apparently it was mainly reverence for their native law, which had branded Jesus as a criminal worthy of death, that moved the populace to turn against Jesus.

When the Apostle admits in his preaching that the Jews of Jerusalem and their leaders had not known what they were doing, he only means that, had the Jews known that Jesus was the Messiah and the Son of God in the true sense, they would not have brought about His destruction; but he does not mean to absolve them from guilt, for their ignorance was a symptom of their unbelief. And unbelief, in face of the "miracles and wonders and signs" experienced, is guilty and sinful according to the teaching of the New Testament.

The Roman procurator, Pontius Pilate, shares with the Jews the responsibility for the death of Jesus. To be sure, one may regard his fateful handling of the Barabbas episode as clumsy rather than actually culpable behavior. Nevertheless, he *did* incur guilt in having Jesus scourged and in finally actually condemning Him to be crucified despite his conviction of His innocence. That he did both under pressure from the fanatical Jews is a mitigating circumstance; but a judge should put justice before his personal welfare. His repeated efforts to carry through the release of Jesus are also an extenuating factor. Although he passed the death sentence which was immediately carried into effect in the execution of Jesus, his guilt is less on the whole than that of the Jews, an idea which John the Evangelist actually puts in the mouth of Jesus Himself (John 19:11). If one were asked to apportion the juridical, formal participation of the Jews and Romans, the an-

swer would have to be that both groups participated about equally in the execution of Jesus since a death sentence was passed by both the Jews and the Romans,<sup>1</sup> but as to the apportionment of guilt, it follows from the foregoing evidence that the guilt of the Jews was the greater.

Hence the death of Jesus on Golgotha, historically viewed, was not the inevitable result of certain tragic circumstances, nor yet a mere miscarriage of justice, nor a genuine private murder (Rosadi). It was a judicial murder.<sup>2</sup>

Much has been spoken of deicide. It should be noted that the New Testament makes no such reproach either to the Sanhedrin or to the procurator. Since the enemies of Jesus lacked any deep insight into the mystery of His being, their act was not actually the crime of deicide. The Christian who, because of his belief in the divinity of Jesus, cannot regard His death on Golgotha otherwise than as a *deicidium*, would also do well to avoid this term when discussing the human guilt involved.<sup>3</sup>

According to the eternal laws, guilt brings judgment and punishment in its wake. The New Testament speaks frequently of the judgment of God that is to fall on those guilty of the death of Jesus. It is not always clear whether a judgment in time or the judgment at the end of time is meant.<sup>4</sup> The Jewish leaders (Mark 12:9) are spoken of as those upon whom the destroying visitation will fall; as are also the inhabitants of Jerusalem of that time and their children (Luke 23:28; Matt. 27:25). The destruction of Jeru-

<sup>1</sup> To this extent the foregoing work is to be classified under Group 3, pp. 13 f., above.

<sup>2</sup> If one wishes to be more explicit, one can call it a "religio-political murder by the abuse of justice" as does R. von MAYR, *op. cit.*, p. 305; and similarly L. WENGER, *Quellen des römischen Rechts* (1953), p. 288, who remarks: "Freilich der Nichtjurist—und vielleicht auch mancher nicht genug formal zu denken fähiger oder bereiter Jurist—wird diese juristisch feine Wendung nicht verstehen." True, MAYER-MALY, *op. cit.*, p. 231, n. 5, finds this definition "doubtless somewhat too subtle."

<sup>3</sup> This is also emphasized by M. LEROUX, "Responsabilités dans le procès du Christ," *Cahiers Sioniens*, 1 (1947), 102-121, esp. 115 f.

<sup>4</sup> Mark 12:9; Matt. 23:35; Luke 23:28 f.; 1 Peter 2:23; Last Judgment: 1 Thess. 2:16; Apoc. 1:7.

salem in the year 70 A.D. was at least a part of that judgment (cf. Matt. 22:7).

Nevertheless Jesus, while dying on the cross, prayed for forgiveness for His enemies: "Father, forgive them, for they know not what they do" (Luke 23:34). This prayer also speaks of the ignorance of the enemies of Jesus, but here again those words are not meant in the sense that those enemies erred innocently. For if no guilt had been incurred, no intercession would have been required. The prayer supposes the guilt of those responsible for the death of Jesus, and it appeals to God's mercy to effect the forgiveness of the guilty.

This attitude of the Lord should be constantly remembered by Christians. It alone makes clear how unchristian, how anti-Christian it would be on the part of Christians of today to harbor feelings of dislike and enmity toward the descendants of those who incurred guilt through what happened on Good Friday on Golgotha. The books of the Old Testament are God's Word for Christendom too, and in the Old Testament we read that "The son shall not bear the iniquity of the father" (Ezech. 18:20).

And now a judgment can also be given concerning the modern demand for a revision, by the Jewry of today, of the trial of Jesus. This demand may be well meant, but surely there is no point in it. It is based, admittedly, on the supposition that the death sentence passed by the Sanhedrin was invalid by reason of numerous illegalities,<sup>5</sup> and that the execution which followed was the direct result of this verdict. But both suppositions are incorrect, as we have shown. A revision by modern Jewry of the trial of Jesus would have to proceed on quite another plane than the juridical one, namely, on the plane of faith. But with this we touch upon a problem which lies outside the historico-judicial realm, which alone concerns us here. Yet it is perhaps well to point out emphatically, in conclusion, that the purely historical view, necessary and justified though it be, is superficial and one-sided if not sup-

<sup>5</sup> The "Gutachten über die Aussichten eines Wiederaufnahmeverfahrens" in BUCHHEIT, *op. cit.*, pp. 262-267, also starts out from this incorrect assumption.

plemented by theological and religious considerations. In the light of faith in the Redemption the tragic event of Good Friday acquires completely new dimensions and depths. But above all, *the question as to who was guilty* becomes a *question put to one's own conscience* or, in the words of a nontheologian:<sup>6</sup> "The inquiry into guilt, complicity, or innocence leads, so we feel, to no final goal here. Without Christ's death on the cross, no salvation; without the verdict of His Jewish or Roman judges, no Redemption. Do we not go in far too much for looking for guilt everywhere? I think we should declare ourselves implicated, because to err is human, and not only Jewish or Roman; and for the rest, to be full of gratitude, not to the Jews and not to the Gentiles, but to Him who had the power to permit guilt to be incurred, and the power to prevent it."

<sup>6</sup> K. S. BADER. *Juristenzeitung*, 6 (1951), 797.

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